

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

- - -

**IN RE: AUTOMOTIVE WIRE HARNESS
SYSTEMS ANTITRUST**

MDL NO. 12-2311

**STATUS CONFERENCE &
MOTIONS FOR PRELIMINARY APPROVAL**

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, October 8, 2014

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1 Detroit, Michigan

2 Wednesday, October 8th, 2014

3 At about 10:07 a.m.

4 — — —

5 (Court and Counsel present.)

6 THE CASE MANAGER: All rise.

7 The United States District Court for the Eastern
8 District of Michigan is now in session, the Honorable
9 Marianne O. Battani presiding. All persons having business
10 therein, draw near, give attention and you may be heard.
11 God save these United States and this Honorable Court.

12 Please be seated.

13 The Court calls Case No. 12-md-02311, In Re:
14 Automotive Parts Antitrust Litigation.

15 THE COURT: Good morning, everybody. Welcome back.
16 I'm glad the weather is good. I figure this is always a good
17 break before January.

18 All right. Let's begin here with the first thing,
19 I would like to introduce, and I know a number of you have
20 met him, but sitting right in front of me is the Master,
21 Gene Esshaki.

22 SPECIAL MASTER ESSHAKI: Good morning, everybody.
23 My assistant who you've dealt with is Dawn Ciolino, many of
24 you have communicated with.

25 THE COURT: All right. And we are going to get

1 back to Mr. Esshaki later on in the agenda.

2 All right. The first thing is the status of the
3 settlements which you have so nicely put forth in your status
4 report. What I would like to do as we do this, we need to
5 set dates. Go ahead, Plaintiff. You want -- no, go ahead,
6 you want to start on the settlements?

7 MR. BURNS: Certainly.

8 THE COURT: Go ahead.

9 MR. BURNS: Your Honor, we have -- this is
10 Warren Burns with Susman Godfrey for the end payors.

11 We have prepared some slides. With your permission
12 I would approach?

13 THE COURT: On which case?

14 MR. BURNS: The slides cover both the settlements
15 and the argument on the case-management proposals.

16 THE COURT: I do not want to get into case
17 management now, I simply want to set dates on these
18 settlements. I know we just received -- Lear's filed its
19 motion. Who is here for Lear?

20 MR. KANNER: Your Honor, good morning. If I can
21 speak from the table?

22 THE COURT: You may, but your name first for the
23 record.

24 MR. KANNER: Steve Kanner, co-lead counsel on
25 behalf of the direct-purchaser plaintiffs.

1 What was filed yesterday was a motion for final
2 approval for the Lear settlement. I believe the date for
3 hearing is December 3rd -- it is the 3rd or 5th, I'm sorry, I
4 don't have that in front of me.

5 THE COURT: It is okay.

6 MR. KANNER: And we have two hearings that are
7 scheduled for that date, final approval of both the Lear
8 settlement and of the AutoLiv settlement in the occupant
9 safety case. The Lear settlement, of course, is in the wire
10 harness case, Your Honor.

11 THE COURT: All right.

12 MR. MAROVITZ: Judge, Andy Marovitz for Lear, and
13 it is the 3rd of December.

14 THE COURT: It is the 3rd, yes.

15 MR. MAROVITZ: Yes.

16 THE COURT: December 3rd. And I would like to go
17 on -- I don't know if you are going to go to Yazaki?

18 MR. BURNS: That's scheduled later in the day, Your
19 Honor, but if you would prefer to hear that now?

20 THE COURT: Well, the motions are heard in the
21 afternoon -- the motions are going to be heard this
22 afternoon, maybe not this afternoon but whenever we get
23 there, most likely I'm going to grant the motion so what I
24 want to do is dates so we can get the dates and everyone can
25 have the dates and we can see how many we can coordinate on

1 the same day.

2 MR. BURNS: Okay.

3 THE COURT: Do you have any proposed schedule on
4 that?

5 MR. BURNS: For Yazaki we have the preliminary
6 approval paper up for approval and also with TRW.

7 THE COURT: Right.

8 MR. BURNS: We are going to ask the Court to allow
9 us to defer notice on a final settlement hearing so we can
10 frankly continue discussions with other defendants and reach
11 a point where we think it is economical.

12 THE COURT: Okay. So the only dates we need are
13 the dates for the fairness hearings --

14 MR. BURNS: That's right.

15 THE COURT: -- and the final hearing, so there is
16 nothing that we need right now?

17 MR. BURNS: Nothing we need right now, Your Honor.
18 I was just going to -- in this section, and perhaps I misread
19 the agenda or we are not on the same page, but I was just
20 going to announce two settlements we have, and the Court may
21 or may not be aware of them.

22 THE COURT: Okay.

23 MR. BURNS: The first is just a visual aid, but the
24 first is with T Rad, and I'm not sure if their attorney is
25 here today, I haven't seen him yet, but the end-payor and

1 dealership plaintiffs have entered into a settlement with
2 T Rad for \$9.75 million.

3 We also -- this was previously announced but the
4 amount of the settlement has not been disclosed, we have
5 entered into a settlement with Panasonic and are working on
6 the settlement papers as we speak.

7 With your permission, Your Honor, this brings the
8 totals of our settlements up to combined on the end-payor and
9 dealership side to \$152,216,250, and that's excluding the
10 Panasonic settlement, Your Honor.

11 Just one more thing to note, Your Honor, we want to
12 draw your attention, these settlements -- the settlements we
13 have previously entered involve a number of parts, many of
14 which are still subject to the stay. Obviously we have had
15 discussion and information exchanges with those defendants,
16 but as you can see, some of the parts that are implicated by
17 these settlements include wire harness, instrument panel
18 clusters, occupant safety restraint systems, and various
19 others on this, and we will give you a copy of this packet
20 later.

21 THE COURT: Okay. Thank you.

22 MR. BURNS: Thank you, Your Honor.

23 THE COURT: All right. Let me just go through -- I
24 think with that you may have covered these but wire harness,
25 instrument panel -- I'm just going down the agenda -- fuel

1 senders. I think most of these need dates just for the
2 fairness hearings and we are not ready to set those dates
3 yet, am I correct in that?

4 MR. BURNS: That's right, Your Honor.

5 THE COURT: And the same with occupant safety?

6 MR. BURNS: For the end payors and the dealers, I
7 think that's correct across the board, Your Honor.

8 THE COURT: Okay. So next we are at the status of
9 the temporary stay in the MDL, that is the DOJ stay, that is
10 item I-C on the agenda. The DOJ has reported to me that it
11 no longer has any objection to discovery, either document or
12 deposition discovery, with regard to the anti-vibration
13 rubber parts, so we are there. We don't know what's going to
14 happen come their report in December, if that's going to be
15 the end, maybe you know, I mean, they certainly haven't
16 advised me, I don't know, whether that's going to be the end
17 or not, but I anxiously await that because it will be great
18 to have closure in the parts in this case.

19 Then I have on the agenda because it was on your
20 proposed agenda but I don't know what it is, end-payor and
21 dealership plaintiffs discussion regarding additional case
22 filings and amended case filings.

23 Put your appearance, please.

24 MR. BURNS: Certainly, Warren Burns for the
25 end payors.

1 Your Honor, I think in terms of efficiency this may
2 be best covered in the next item that we were going to cover
3 in the discussion of case-management proposal.

4 THE COURT: Okay.

5 MR. BURNS: Thank you, Your Honor.

6 THE COURT: And let -- who is going to discuss the
7 case management?

8 MR. DAMRELL: Good morning, Your Honor.
9 Frank Damrell on behalf of the end-purchaser plaintiffs.

10 We have reached a point in this case, Your Honor,
11 which we view as very critical, and I think the Court does as
12 well. When we first filed the wire harness complaint and
13 Your Honor adopted the very effective template approach,
14 which we have used effectively throughout this case through
15 the motion phase, through the subsequent complaints.
16 However, when we first met in June 2012 when these cases were
17 consolidated no one knew where we were going except perhaps
18 the DOJ and certainly some defendants would have known but we
19 didn't, and who would have known that we would have 29 parts
20 now.

21 In fact, we have -- we have only recently learned
22 now, for example, Denso is named in 18 of those parts, and we
23 certainly didn't anticipate that. For example, I mean, we
24 learned this from Mr. Burns -- and I'm going to divide my
25 time with Mr. Burns in this case, but there are now targeted

1 models and makes of cars with price-fixed parts, we didn't
2 know that -- we didn't know where they were, and now we know
3 more about that, and it is still emerging.

4 In light of where we are, we would like the Court
5 to consider the issues today with the backdrop of class
6 certification as the only vehicle that we have that would
7 permit the injured parties to this conspiracy to receive
8 restitution. Many of the attorneys sitting before you today
9 previously appeared before various federal judges and agreed
10 on behalf of their clients, the defendants in this case, in
11 plea colloquies that restitution would be addressed in civil
12 cases, not in the criminal case.

13 For example, on March 5th, 2012, the sentencing
14 hearing was for Denso, and Judge Steeh said at that time, and
15 there will be -- there would be no restitution ordered with
16 this agreement if accepted by the Court. The question of
17 restitution would apparently be left to the civil cases to
18 determine. You understand that?

19 And the defendant Denso, through its attorney,
20 Mr. Cherry, responded we understand, Your Honor.

21 Now, Judge Steeh clearly felt that the wheels of
22 the federal judicial system with respect to this case would
23 be -- would grind finely and would ultimately deal with the
24 issue of the civil liability. To ensure that we have the
25 opportunity to do so, to pursue those civil claims, we are

1 asking the Court to refrain from entering a class
2 certification schedule for a period of time, four to six
3 months perhaps. This is not to defy your order as been
4 suggested, we have not intended to do that whatsoever, we are
5 just recognizing the fact that we know much more about this
6 case than we knew two years ago or even a year ago or even
7 six months ago. We feel it is necessary to pursue our
8 discovery, to obtain additional information from the settling
9 defendants, which by the way has been a source of information
10 that now provides us a better idea of what has happened in
11 this case, as well as information from the amnesty
12 applicants, and the opportunity to explore a case-management
13 plan with Master Esshaki and the parties.

14 I think it makes sense, in fact, it has been
15 suggested to us that the sides individually and independently
16 meet with the Master to discuss off the record exactly what
17 their concerns are, what they want to accomplish with respect
18 to this, and we would really urge the Court to consider that
19 as a possibility because I think it would really advance the
20 discussion and it would advance the purpose of certification
21 if we had that opportunity to meet with the Master in this
22 case.

23 We are asking the Court to consider a
24 case-management plan which reflects the nature of this case
25 itself. This is an MDL case, it should reflect the MDL case,

1 and it should minimize discovery battles and ultimately jury
2 confusion. We are the only parties that I know of that have
3 really offered such a plan, and albeit this is an evolving
4 plan, it is not the case in concrete by any means.

5 THE COURT: You are talking about the plans that
6 actually are on the agenda as the direct purchaser, end payor
7 and automobile dealer plans?

8 MR. DAMRELL: Yes, and I'm also referencing how we
9 deal with certification, Your Honor. It is our view that
10 this MDL, as you've reminded us in the past, is really
11 about -- not about price-fixed parts but about price-fixed
12 parts in automobiles that consumers have purchased. And we
13 envision based upon what we know now as opposed to what we
14 knew six months ago or much less two years ago that the class
15 certification would be -- the class would be of cars that
16 would -- that have been purchased that have priced-fixed
17 parts in them. That makes the most sense. Many cars have
18 been targeted and they now have multiple price-fixed parts.
19 We see no reason to focus only on wire harness when we have a
20 class dealing with a model and make that has multiple
21 price-fixed parts, and that should be the model I think for
22 class certification.

23 The alternative that has been promoted by the
24 defendants is a series of single trials involving single
25 parts. As an example, we would have a Camry with multiple

1 parts in it that are price fixed, that's what we allege, and
2 that's what they have admitted to, and yet we would only be
3 faced with certification according to the defendants with
4 wire harness, which we think doesn't make any sense in light
5 of now the knowledge and the understanding that we have of
6 what's gone on, we have a better feel and knowledge of the
7 contours of this conspiracy. We are with dealing with
8 multiple conspiracies, and we have -- Mr. Burns will tell
9 you, this case has changed from our perception and hopefully
10 from the Court's perception because we have now engaged in
11 discovery, though limited, we have talked to settling
12 defendants, though limited, and this is ongoing and we are
13 now -- the -- we were in the dark but now the light has been
14 shed upon the case itself.

15 And it is our view that the proposal that we make,
16 and we will be making a proposal at the conclusion of
17 hopefully the time period I have mentioned, in the spring of
18 this next year, which would allow us in the meantime, you
19 know, further discovery, further discussions with amnesty
20 applicants and settling parties, defendants, and as well we
21 don't really know at this time what has happened to the DOJ
22 investigation, it may end in 2015, we don't know that, that
23 would be an enormously important factor in pursuing further
24 discovery for the plaintiffs in this case.

25 THE COURT: All right. Let me try to clarify

1 something, and I know this was brought up in the briefs that
2 have been filed regarding -- or statements, I don't know what
3 to call them, regarding the scheduling.

4 MR. DAMRELL: Right.

5 THE COURT: Are you alleging -- you said multiple
6 conspiracies but then on the other hand you talk about the
7 one car. Are you alleging also a single conspiracy?

8 MR. DAMRELL: What type of conspiracy?

9 THE COURT: A single conspiracy on all parts.

10 MR. DAMRELL: Your Honor, we don't know.

11 THE COURT: It is not in your pleadings.

12 MR. DAMRELL: We are in the process of
13 understanding what this conspiracy or conspiracies is about.
14 We are not in a position to allege a single conspiracy, nor
15 are we in a position to allege how many multiple conspiracies
16 existed with respect to the parts that were put into the
17 vehicles.

18 THE COURT: Are you saying that your plan as you've
19 outlined in your supplemental brief encompasses or is
20 predicated on all of the parts being in the case and
21 discovery substantially done on all of them?

22 MR. DAMRELL: Your Honor, we are not talking about
23 a single trial or all of the parts.

24 THE COURT: I'm not talking about trials, I'm just
25 talking about certification of the class.

1 MR. DAMRELL: Certification may take, as I
2 suggested, a car with multiple price-fixed parts in it. It
3 may --

4 THE COURT: Well, I don't understand that. So we
5 have a car with multiple price-fixed parts but then you are
6 saying you wouldn't know if there is price-fixed parts until
7 the DOJ is done?

8 MR. DAMRELL: Not necessarily, Your Honor. We may
9 know, we may not know. We are just learning about the
10 conspiracy in the last six months it has emerged and now we
11 have a better understanding of the parts that were placed in
12 vehicles, and I think Mr. Burns is going to demonstrate that,
13 that we now know that certain vehicles and certain models and
14 makes were targeted by these defendants, and that is
15 something that we have just learned about, and we feel that
16 that becomes a very important component of any certification
17 process.

18 THE COURT: Okay.

19 MR. DAMRELL: I'm going to allow Mr. Burns to
20 continue our presentation.

21 MR. BURNS: Your Honor, if I may return to the last
22 point and just note this as succinctly as possible? There
23 are two real elements here, I think we filed a position
24 statement on class certification back last July, we filed a
25 supplement that includes a case-management plan. Both are

1 consistent in the sense that at this point we don't know
2 whether we are going to attempt to certify a class that is
3 wire harness, instrument panel clusters and ten other parts
4 or whether it is going to be a single part. What we are
5 saying is that we need some time and some limited -- and some
6 discovery to reach that conclusion. And also what we are
7 saying is that we are not asking for a blank check, that we
8 have conducted limited discovery and I will get into that, we
9 have had an opportunity to talk to settling defendants, and
10 we think we are going to be in a position with the next four
11 to six months by either the next status conference or a date
12 the Court sets to further advise the Court on how we envision
13 this case going forward from our perspective.

14 THE COURT: Okay.

15 MR. BURNS: I will add a bit, and I do have copies
16 of the slides, I can hand them up to you later if you would
17 like, Your Honor, at the end of the hearing?

18 THE COURT: All right.

19 MR. BURNS: Mr. Damrell really referred to the fact
20 that wire harness in many senses in this MDL was the tip of
21 the iceberg. The Court will recall the first wire harness
22 cases were filed on October 5th, 2011, roughly three years
23 ago, and subsequently consolidated for pretrial purposes
24 before this Court.

25 But at the time, certainly as of October 11th -- or

1 October 2005 the only insight this Court or the parties -- or
2 the plaintiffs rather had into this case was a single part,
3 wire harness. It was the first action by the DOJ, it was
4 several months before additional cases were filed. It was
5 our first insight into what would become a much larger MDL as
6 Your Honor is well aware.

7 Now as time proceeded obviously the cases were
8 consolidated but Your Honor will also recall that the
9 defendants took the position and we ultimately agreed that
10 discovery should be stayed on the initial cases until after
11 motions to dismiss were decided. So in July of 2012 the
12 case-management order was entered that effectively stayed
13 discovery for those cases. We have the advantage of
14 guilty-pleading defendants' productions to the Department of
15 Justice but that was it, sort of lump sum and those came in
16 over several months. We did not have the opportunity to
17 conduct depositions, to interview folks, any of that.
18 Discovery was effectively stayed.

19 The wire harness motions to dismiss were ultimately
20 decided on June 6th, 2013. Subsequent to that the Department
21 of Justice asked that a stay be -- a stay be instituted
22 across the cases with some exceptions but, again, as of
23 June 6th, 2013 plaintiffs were still unable to conduct full
24 discovery into these cases. And as the Court is aware, that
25 discovery stay was just lifted this year on June 25th, 2014

1 as to the first three cases, a stay persists as to remaining
2 cases.

3 The end result of this is even though our
4 perception of the wire harness case and the other cases in
5 this MDL is a little better today, we have been through some
6 of that Department of Justice production, we have had the
7 advantage of settling with some defendants, there has been
8 limited information exchanged through the ACPERA applicants.
9 And your court will remember that Sumitomo acknowledged
10 itself as the applicant in the wire harness case sometime
11 this last summer and there are others out there, but frankly
12 we have not seen applicants come forward in all the cases yet
13 so we are still in that process of investigating there.

14 Nevertheless, our view of these cases has changed
15 significantly. We started out with wire harness, you see it
16 in the middle, but now we have 29 cases before this Court, 29
17 different parts all pending before this Court. And what we
18 hear from the defendants in their submissions is that, look,
19 the plaintiffs' idea is crazy, these are independent
20 conspiracies.

21 Am I quoting or just paraphrasing?

22 MR. CHERRY: You got it right.

23 MR. BURNS: It is crazy to think of this as a
24 multiple-part conspiracy. These are individual conspiracies,
25 that's how the case should proceed, wire harness only, let's

1 go forward, but, Your Honor, from our perspective it just
2 doesn't look like that. What we didn't know at the time that
3 wire harness was filed and at the time that the DOJ announced
4 the first plea is that Denso, represented by Mr. Cherry here,
5 would be in 18 of these cases, 18 individual cases of the
6 ones that are filed currently. That covers quite a bit of
7 the map of the part cases but let's go further, Your Honor,
8 and I don't think we have to go too far into the well of
9 defendants. If you add Hitachi into the mix we continue to
10 cover that map. If you include Mitsuba, again, we continue
11 to cover the map. If you add Tokai Rika we cover 26 cases.
12 Four defendants, Your Honor, involved in interwoven
13 conspiracies, it is before you on the screen, cover 26 of the
14 29 cases yet the defendants ask this Court and ask the
15 plaintiffs to take their word for it that these are single
16 conspiracies, that we should go forward with wire harness
17 only. Your Honor, it begs credulity.

18 What we have also learned, Your Honor, is that the
19 affected vehicles often, and this is only through the limited
20 discovery we have been able to get into so far and
21 cooperation, often include multiple fixed parts. They are
22 not limited to a wire harness as the fixed part in that
23 vehicle.

24 You look here the 2009 Toyota Avalon, and what we
25 have discovered is there are at least -- at least three parts

1 in that vehicle that have been fixed. How many more? We
2 don't know. Why? Because we haven't gotten -- we haven't
3 gotten to get into the discovery in 26 of the 29 cases.

4 How about the 2007 Honda CRV, we have four of six
5 fixed parts in there, wire harnesses, HCPs, IPCs and occupant
6 safety restraint systems. The same with the 2012 Toyota
7 Camry hybrid, four different parts and that's all we know
8 about right now, Your Honor. What we suspect is that that
9 graphic is going to increase, we are going to see some more
10 bubbles, some more lines, some more parts on these vehicles
11 because these are some of the more popular vehicles sold in
12 the United States, they were some of the more popular
13 vehicles that were the object of the fix, and we think we are
14 going to see it spread across the cases.

15 What we have also learned recently, Your Honor, and
16 by recently I mean within the last two weeks, nowhere
17 disclosed by the defendants, discovered through our own
18 resources is that in Japan on an OEM by OEM basis, so Toyota,
19 Honda, Nissan and others, there were parts conferences made
20 up of all the parts manufacturers -- major parts
21 manufacturers --

22 THE COURT: Say that again, parts?

23 MR. BURNS: There were parts conferences.

24 THE COURT: Multiple parts conferences?

25 MR. BURNS: Yes, often they are split into two

1 different sets of parts, so you have body parts and
2 electrical parts within these conferences, but what you have,
3 Your Honor, are multiple times a year when these defendants
4 are together in a room talking to Toyota, talking to Honda,
5 getting information from the car manufacturers about what is
6 coming down the pike, but also having the opportunity, and we
7 suspect in realty this happened, to meet amongst themselves,
8 to talk about prices on multiple parts. It is not a wire
9 harness conference, it is a parts conference. These
10 companies were able to meet, and I don't think any of them
11 will deny it, were able to meet ostensibly for the purpose of
12 discussing parts as a whole around these vehicles. And what
13 we have learned and what we strongly suspect will be further
14 borne out in discovery was that was an avenue that the
15 defendants may have taken advantage of to further these
16 conspiracies.

17 The end result of all of this is that to
18 plaintiffs, the end payors and direct purchasers for whom I'm
19 speaking right now, this is starting -- this is increasingly
20 not looking like a single-part case, this is increasingly
21 looking like a conspiracy that at a minimum touch multiple
22 parts. Did it touched all 29 parts? I don't know, Your
23 Honor. I don't think any of us knows. What we are asking
24 for is some time to try to figure that out.

25 And coming back, and this was actually covered on

1 the earlier point in the agenda where we referred to some
2 amended and some upcoming case files, what we have seen is
3 that the DOJ may be taking a slightly different view of these
4 conspiracies and these parts. In its most recent plea
5 filings the DOJ alleged a single conspiracy covering spark
6 plugs, standard oxygen sensors and air fuel ratio sensors,
7 three parts, single count, single conspiracy. We are still
8 investigating that but it may be a case and we wanted to
9 advise the Court that it may be a case where you will see us
10 file a single case covering multiple parts, and frankly we
11 are looking across the board at all of our cases now to see
12 how this puzzle comes together and how it fits.

13 We think as a result we need coordinated discovery
14 across these part cases, it just makes sense, it is the only
15 way we can handle it for a number of reasons. One, we want
16 to -- we want to investigate the scope of these conspiracies,
17 and the optics are there, Your Honor; it looks to us like it
18 is broader than an individual part. We also want to be able
19 to minimize the burden particularly on third parties as we
20 conduct discovery so that we are going to Honda once or as
21 few times as possible because I can tell you those parties
22 will be in this courtroom very often, we will probably see
23 them every status conference complaining about the burden of
24 producing documents and data to the parties in this case. We
25 think that burden only exponentially grows if we are forced

1 to hit them with 29 different discovery requests. We just
2 don't think it makes sense, we don't think we can do it, so
3 we think we need to coordinate certainly for that purpose.

4 And we think that this Court and why we have
5 proposed a trial plan at this point is we think that there
6 are decisions that need to be made on the front end that will
7 help guide the parties, push us in the right direction, and
8 that's what we are asking the Court and Master Esshaki to do
9 in this sense is to take a look at this case and give us a
10 preliminary sense of how it should go forward. That does not
11 mean that you have to decide today when class certification
12 should proceed in any or all of the cases and, in fact, we
13 are asking you to hold off for at least a few months so that
14 we can come back to the Court and further advise you.

15 As you heard Mr. Damrell say, we would like the
16 opportunity and we think all parties would benefit from this
17 to meet with Master Esshaki and talk with him about these
18 issues to the extent that the Court would like us to do so
19 and see if there are ways we can marry positions together so
20 we narrow disputes, and this is particularly true of the
21 case-management proposal.

22 Obviously the case-management proposal has been met
23 with quite a bit of vitriol and very strident arguments that
24 have been asserted in at least two or three different briefs.

25 THE COURT: What is your case-management proposal?

1 I have the four phases for trial?

2 MR. BURNS: That's correct.

3 THE COURT: What's the case-management proposal?

4 MR. BURNS: The case-management proposal certainly
5 includes that but it would also have to include some type of
6 schedule or management of the class certification process.

7 THE COURT: You don't present one to the Court
8 though?

9 MR. BURNS: Well, that's right, Your Honor. What
10 we said in our original filing, and this was the July filing,
11 which is on the agenda somewhere I think just in wire
12 harnesses, that we need additional time -- for all the
13 reasons I have discussed today we need additional time for
14 discovery to get a sense of when timing is appropriate for
15 class certification. Again, we are not asking for a blank
16 check, that's not what we are doing. We will come back to
17 you as early as the next status conference or some other date
18 the Court determines and present you a firm plan on that, but
19 we do need additional time to work out that particular
20 schedule.

21 THE COURT: Well, I guess you threw me off when I
22 read the -- is it phase one, I don't have my notes here that
23 I took on that, of the trial because I just could not fathom
24 how we would have a trial of that nature. I mean, I tell you
25 that now because that's just the way I'm thinking, I cannot

1 imagine it. So without schedules, I don't know, you are
2 saying you want until December to make some proposal with
3 discovery schedules, is that it?

4 MR. BURNS: If I may, Your Honor, and when you were
5 talking about phase one I just want to make sure I
6 understand, were you speaking about what the defendants
7 called the sort of global trial, all 29 parts in the same
8 trial, was that the concern?

9 THE COURT: We can slow down for phase one.

10 MR. BURNS: Well, fair enough, and I'm happy too
11 claim authorship. Usually -- I am from Mississippi
12 originally, Your Honor, I don't speak English actually, it is
13 some dialect, but the truth of the matter is this, let me try
14 to clarify that. We are agnostic at this point as to how
15 many parts will be in a particular trial. I say we are
16 agnostic, that's actually wrong, we think it is going to be
17 more than one part. We think we may organize this case on
18 a -- on perhaps a basis that really centers on the defendant
19 and its co-conspirators, and obviously the defendant that
20 comes to mind would be Denso because it seems to be at the
21 heart of a number of these conspiracies but does that mean we
22 are going to cover all parts in that case? We don't know
23 yet. None of the parties -- none of the plaintiffs are in a
24 position to tell you that today because we haven't been able
25 to take the discovery to allow us to know that, but one thing

1 I do know, Your Honor, is that what the defendants are
2 characterizing as our proposal, and I understand there's some
3 confusion on it, this global trial, that's not what we
4 intended, so I will walk that back to the extent I made it
5 because I just don't know, I can't tell you that today. What
6 I do know is the alternative, Your Honor, and the alternative
7 that the defendants seems to be proposing is 29, 30, 31, 32,
8 depending on how many other cases come out, individual
9 trials. That prospect seems daunting, Your Honor. It seems
10 a lot more daunting than combining some cases where we can.

11 THE COURT: To say the least.

12 MR. BURNS: What it tells me is that you, me or
13 probably our successors will be here trying these cases for
14 30 years, that can't be the case, Your Honor, it can't be the
15 case, not without this -- not with four defendants capturing
16 26 to 29 parts, that can't be the way to run that railroad.

17 So I hope -- yes, Your Honor.

18 THE COURT: So are you backing off from your phase
19 one because I just want to be able to understand this?

20 MR. BURNS: Absolutely not, Your Honor. What we
21 are saying is we will come back at the next status conference
22 at a minimum or some other date the Court sets and we will
23 give you our view then of how we would proceed with this case
24 because we think in that four- to six-month period we will
25 have a little more time to get into discovery with these

1 folks, to do some more written discovery, to continue
2 interviews with amnesty applicants that have just begun to
3 get a better handle of these cases and the breadth of these
4 cases.

5 You also say, Your Honor, the --

6 THE COURT: Are you still proposing -- I've got any
7 notes now. Are you still proposing class cert basically
8 after the trial?

9 MR. BURNS: No, Your Honor, class cert will have to
10 occur before the trial, so -- and I was actually going to get
11 to sort of a clarification on those points.

12 THE COURT: Okay. I'm sorry.

13 MR. BURNS: The predicate is what does this trial
14 look like? And what we are saying is please give us some
15 more time, don't enter a wire harness order today that
16 requires us to brief that issue as the defendants would want
17 us to do next summer, that's not enough time. No one -- no
18 one on the plaintiffs' side thinks that's enough time. What
19 we are saying is give us the time, we will figure it out and
20 we will tell you. Once that issue is decided, that's really
21 when the case-management plan makes sense and kicks into this
22 case, and there we stand by our submission, we are not
23 walking away from that submission, but to clarify those
24 points the class certification -- all of the plaintiffs'
25 classes will have to occur before trial. You are not going

1 to want to stop trial, go through a class-certification
2 process in the middle of it, we get that, so class
3 certification will occur before trial.

4 The reason -- the principal reason for the series
5 of phases in the plan we have presented is to avoid jury
6 confusion, Your Honor, because obviously what we have in this
7 case, we have three different plaintiffs' classes, we have
8 individual plaintiffs all with slightly different theories of
9 the case, none opposing each other, I don't think it is fair
10 to say they oppose each other but they are slightly
11 different. And then we have issues of damages for the direct
12 purchasers, the overcharge as it is passed through the
13 indirect purchasers, all of these elements combine to present
14 a clear and present danger, if you will, a risk that is the
15 jury going to be confused, that's why we have given you a
16 four-phase approach.

17 The first phase covers the scope of the conspiracy,
18 it covers the fact of the conspiracy, it covers the elements
19 that are common to all of the plaintiffs' claims and all the
20 plaintiffs are going to participate in that phase, and I
21 think we can manage that, we can manage any issues of
22 confusion there.

23 We move to phase two and --

24 THE COURT: Okay. Who would be the defendants in
25 phase one?

1 MR. BURNS: All defendants, all defendants who are
2 implicated in that case. Not all the defendants in the MDL,
3 Your Honor, not -- whichever -- whichever defendants are
4 implicated in the case we put forward, so if it is three
5 parts, if it is six parts, it is the defendants that fall
6 within those cases.

7 THE COURT: Well, if we take just the wire harness
8 don't we have 20 some wire harness defendants?

9 MR. BURNS: Obviously there are several related
10 parties, Your Honor.

11 THE COURT: Well, I cut those out, it would be 40
12 some if you do the --

13 MR. BURNS: I don't think we are that high. Your
14 Honor trimmed some of that during the motion to dismiss
15 phase, I don't have it handy, but my recollection is maybe we
16 have ten groups of defendants, probably less. It is a
17 manageable number, and it is -- I mean, the issues there are
18 certainly common to all of those defendants, and I don't
19 think anyone is proposing splitting up trials for defendants
20 because then that would make their proposal of 30 separate
21 trials increase tenfold at least for wire harness, so I don't
22 think that's going to make sense, I think we would keep the
23 defendants the same, and that's in phase one.

24 Phase two is really the issue of the overcharge
25 that was assessed against the direct purchasers. So there in

1 realty the direct purchasers' class, Ford, who supports this
2 proposal, and the direct purchasers will speak later, I think
3 what you will hear from them is they have no diametric
4 opposition to this proposal, they want to think about it and
5 think about their issues as well, but in phase two you will
6 have the direct purchasers and the issues of overcharge
7 assessed against them coming before the Court and tried to
8 the jury.

9 Phase three is the issue of pass on to a level of
10 indirect purchasers which includes the dealership class, it
11 probably includes the City of Richmond if the City of
12 Richmond maintains in the case -- or remains in the case. It
13 certainly includes what we will call fleet purchasers who are
14 major end purchasers in a sense but purchase directly from
15 the OEMs. That probably includes the City of Richmond or at
16 least some of their purchases, we are not sure, they can
17 speak to that better than I can.

18 Phase four is probably the most novel of the phases
19 that we are proposing. It is --

20 THE COURT: This is the phase where the defendants
21 don't participate?

22 MR. BURNS: That's right. It is an equitable
23 phase -- well, frankly, Your Honor, at that point it is our
24 position they have no more interest. At that point the
25 amount that is going to be split up between the dealership

1 plaintiffs and the end purchasers who purchase from them,
2 okay, and those are the two classes that are impacted by
3 phase four, it is a matter of allocation at that point. So
4 the end payors and the dealership class will approach the
5 Court and we'll have an equitable proceeding there, and it is
6 our submission in all likelihood we will probably have a
7 settlement that this Court could approve after its inquiry
8 because we work --

9 THE COURT: I would like to approve a settlement
10 before we begin any trial.

11 MR. BURNS: Your Honor, we are working hard on
12 that. Your Honor, that's our four phases. The predicate
13 question is class certification, the timing of it, when that
14 is going to occur, and that leads to the case-management
15 proposal.

16 I will say this, Your Honor, and I don't know if
17 this will make today easier for you, but what we would
18 propose is that we use the next four months, I think the next
19 status conference is in January if I'm not mistaken?

20 THE COURT: It is.

21 MR. BURNS: We use that four months to actually
22 talk among the parties, sit down probably in front of
23 Master Esshaki either together or in individual sessions and
24 a combined session, but to talk through some of these issues.
25 I mean, frankly having read defendants' submissions I'm not

1 here to say our case-management proposal is perfect, I mean,
2 no case-management proposal could necessarily be perfect.

3 THE COURT: Well, you don't have a case-management
4 proposal, you have trial --

5 MR. BURNS: Trial plan, we will call it that.

6 THE COURT: I'm concerned because I'm concerned
7 about the case-management proposal up to trial.

8 MR. BURNS: Up to trial and understanding, and
9 that's -- from our perspective that's principally centered on
10 class certification, and that's why we didn't want that
11 aspect to be lost today even though we briefed that issue to
12 begin with last July. We agree 100 percent, it is a
13 predicate question and we have to figure that out first.

14 Your Honor, I think what would be constructive is
15 not to sit here today and battle about the merits or lack of
16 merits of the individual pieces of the trial plan that we
17 have proposed but to look at this globally including class
18 certification, to sit down in the next four months and see
19 whether we can narrow the issues before you.

20 At this point, Your Honor, I don't think the
21 defendants, as their submissions I believe would require,
22 want to have class certification next summer, maybe they do,
23 they can tell you, but I don't think there is frankly enough
24 time to do that especially because we have taken a lot of
25 flack, Your Honor, in the defendants' submission for this,

1 what they say here that we are continuing to obstruct
2 discovery relevant to and delay scheduling briefing on class
3 certification. Well, my view of that, Your Honor, is that it
4 is a big cat and mouse. The defendants are the ones who have
5 all the information, we don't. These same defendants who say
6 we are obstructing and that the class should go forward as
7 quickly as possible are the same defendants who haven't
8 produced a single document in response to our written
9 discovery request to date. We have spent the last six months
10 arguing about their objections, and we have worked through a
11 lot of those, but it takes time, but I think it goes beyond
12 credulity, it is frankly a bit galling say that we are
13 obstructing by trying to present a plan that says look, we
14 are the plaintiffs, we get to define our case. You are the
15 folks that have all the information and frankly you are not
16 giving it over very freely. We have a right to determine
17 what this case looks like, we have a right to discover the
18 facts and we want to do so and we want the time to do so.

19 So, Your Honor, again we are not asking for a blank
20 check. What we are saying is this, give us that four to six
21 months either to the next status conference or whatever date
22 Your Honor wants to put on it, and we have a plan for what we
23 are going to do during that period. First, as I described is
24 we would like to meet with Master Esshaki, many of us have
25 met him over the phone already, but we think as we stated

1 very early on that having a master in this case helps you, it
2 helps us, it helps everyone and we would like to utilize that
3 process if you want us to. So there is time for all of us to
4 get together on these issues and work through them.

5 What we are also going to do, Your Honor, is at a
6 minimum file -- not file, serve additional discovery which we
7 will expedite over any objections, but additional discovery
8 aimed at getting at some of these common elements that we
9 haven't had a chance to yet, so that's the conferences that I
10 mentioned before, it is issues that cut -- that potentially
11 cut across these cases. Now, we can only do it in three
12 cases now and I guess anti-vibration rubber parts since the
13 stay is lifted there, but we think we can do it and we think
14 we should have an opportunity to do it.

15 What we are also going to do, you are going to hear
16 today the preliminary approval motion on the Yazaki
17 settlement and the TRW settlement. The Yazaki settlement is
18 a significant step forward in this case particularly as it
19 applies to the earliest of the cases. By preliminarily
20 approving that settlement it triggers the cooperation that we
21 will receive under of, and what we are going to do in the
22 next four to six months is work with each of those
23 cooperating defendants, we are through the point where we
24 have gotten preliminary approval hopefully and we are going
25 to work with each of those cooperating defendants who are

1 hopefully going to give us a little better sense of what this
2 case looks like.

3 We are also going to demand from the ACPERA
4 applicants greater cooperation. Some of it is beginning, I
5 don't want to -- I'm not here to condemn any particular
6 applicant, that process beginning and the timing is theirs to
7 choose but we are going to demand more cooperation, we are
8 going to demand that they fully live up to that the ex para
9 statute and we are able to take advantage of that, Your
10 Honor.

11 And frankly we would -- I don't know who others are
12 in the courtroom but we would encourage any other applicants
13 who haven't come forward to come to us now, let us have that
14 cooperation now, it is going to help us, it is going to help
15 the Court, it is going to help the defendants frankly by
16 figuring out how this case will proceed and how we can do it
17 expeditiously.

18 Those are the principal issues we are going to
19 focus on in the next four to six months, as I said. There is
20 a -- I will say one last thing, there is a -- on that front
21 there is a pending motion to compel against the dealership
22 class from the downstream discovery issue, it is obviously
23 implicated by our case-management plan. We would suggest
24 that that also be rolled into this process to see what we can
25 figure out there, and whether there are any compromises to be

1 made so we can get that off the Court's plate, and hopefully
2 we can. I know that the dealers are more than willing to
3 engage in that further, and I think that we should be able to
4 meet with Master Esshaki and see where we can get with it
5 before we have to put it on your plate.

6 THE COURT: Okay.

7 MR. BURNS: The final thing I'm going to say, Your
8 Honor, is there is a risk of clear prejudice to us by rushing
9 the class certification and doing that too early. Again,
10 discovery in this case is full-on discovery, it has only
11 going to be going on less than six months and frankly has
12 really yet to churn and begin to bear fruit. We need the
13 additional time, and we trust and pray that the Court will
14 grant it to us.

15 Now, I would also say --

16 THE COURT: What would be the risk to you if we
17 proceeded to class certification on wire harness because you
18 are telling me about there may be multiple parts, et cetera,
19 and certainly the facts are suggesting that that's what's
20 happening, but if you have cert on one and you handle it the
21 same way we are handling these settlements, we don't send out
22 notice right away, we may wait to see what's coming up,
23 what's the risk to you?

24 MR. BURNS: The one principal risk that jumps to my
25 mind, and I will say the -- I will give my first reaction.

1 We are --

2 THE COURT: This has nothing to do with trial. I'm
3 not going forward to say, okay, we are trying wire harness.
4 I don't know what's happening with that.

5 MR. BURNS: I understand. A principal risk I can
6 think of -- among the principal risk, but the one that jumps
7 to mind is this is going to be an expert-driven case
8 certainly on all plaintiffs' parts, so the issue of the
9 overcharges to the direct purchasers and passthrough to the
10 indirect purchasers is all going to be effectively conveyed
11 by those experts. I think, and I'm not an economist, I'm not
12 speaking for any experts we have hired, but the issue of what
13 parts are implicated in a particular vehicle and how that
14 affects -- how that potentially affects the passthrough of an
15 overcharge, whether you have six parts, whether you have one
16 part, the value of those parts I think is very important for
17 the experts to understand that. Is it absolutely necessary?
18 I can't say that, but I think it is important for us to have
19 the complete picture -- or as nearly a complete picture of
20 the universe of parts in a particular vehicle that may impact
21 that issue.

22 That issue is unique frankly to the indirect
23 purchasers. I mean, the direct purchasers don't have to
24 prove passthrough, it is not an issue for them, the Supreme
25 Court said you get all the damages under the federal laws.

1 It is an issue for us, so rushing to class certification
2 certainly could be prejudicial on that front.

3 I think it is also prejudicial to us because
4 frankly the scope of conspiracy impacts obviously the
5 culpability of these parties that are sitting to my left and
6 behind. So if it is a conspiracy of three culpability is
7 defined by that. If it is a conspiracy of ten it is defined
8 a little bit differently. So I think we need to understand
9 the scope so that we can assess what the culpability of these
10 individual defendants is under a joint and several liability
11 regimen. Those are the principal areas that come to mind.

12 I will say this too, the truth of the matter is,
13 Your Honor, if we try wire harness first, think of the
14 evidence that is going to come in. I mean, what we are going
15 to be introducing when we are telling the jury about all of
16 the bad things they have done with respect to wire harnesses,
17 we are going to say oh, by the way, Yazaki pleaded guilty to
18 fuel senders and instrument panel clusters too, so we'll have
19 some evidence on that coming in too, the jury is entitled to
20 hear it, and it bears on the fact of conspiracy and
21 violation. So there's no way to divorce wholly the various
22 parts that are at issue in this case. We can perhaps
23 compartmentalize and make that a little more manageable after
24 we figure out through a little more discovery where we are
25 at, but certainly impossible -- it is certainly impossible to

1 isolate a part and the activity of other defendants from
2 coming into trial.

3 The last thing I would say, Your Honor, subject to
4 any questions you might have, is in reality there is no
5 prejudice to the defendants here if we wait that period of
6 time to try to figure out what this case looks like. Again,
7 discovery is really just beginning. I mean, these folks are
8 going to respond to additional discovery in the HBC and IPC
9 cases, they have asked for and we have agreed to 45-day
10 extensions in those cases. Again, we don't have productions
11 as to our document requests, and I'm sure they will say we
12 gave you most of it in our DOJ productions but I don't know
13 what's out there. We are also going to have requests that
14 might not have been encompassed by the DOJ production. So
15 this case needs time, they know it, I think everyone in this
16 courtroom would realistically say class certification next
17 summer should be off the table, there is just not enough
18 time.

19 There is no other -- there may be no other
20 antitrust case of this scope going or have been, but
21 certainly major antitrust cases in this country don't get to
22 class certification that quickly. The reason is, as the
23 Court knows, class certification is very important in these
24 cases for both sides. They view it as a way to limit their
25 liability, to kick us out notwithstanding having promised to

1 deal with restitution in these cases. We look at it as a way
2 to compensate the victims of these conspiracies and the only
3 realistic way to do so.

4 So with that, Your Honor, I will close, but if you
5 have any additional questions I'm happy to answer them.

6 THE COURT: Okay. All right. Let's hear from
7 defendants. Plaintiffs have brought forth some very novel
8 ideas as how to handle this. What do you say? May I have
9 your appearances first?

10 MR. CHERRY: Yes. I'm Steve Cherry of the law firm
11 Wilmer Hale. I represent Denso but I'm speaking on behalf of
12 the wire harness defendants.

13 And just going through what Mr. Damrell and
14 Mr. Burns have said sort of point by point. First is this
15 issue of restitution that was addressed at the plea hearing.
16 As I'm sure Your Honor knows, under the federal law there is
17 a provision for restitution to direct victims in connection
18 with a felony plea, it does not cover indirects. The direct
19 victims here are not represented by any of the people sitting
20 in this room, they are dealing with this issue on their own
21 and are not a part of any punitive class.

22 The second point, Mr. Damrell and Mr. Burns have
23 repeatedly said that they need discovery before they can even
24 address a schedule for class cert. They do downplay
25 significantly the discovery that they have had. They have

1 had over 12 million pages of the most significant documents,
2 all the documents produced to the DOJ and the key documents
3 having been translated into English for them, they have had
4 those for two years now. They have also had the
5 interrogatory responses of the defendants in the wire harness
6 case going through in detail, every meeting with the
7 competitor, all the details --

8 THE COURT: What are they referring to the
9 defendants not answering their discovery?

10 MR. CHERRY: They are talking about additional
11 document productions, so they have the 12 million DOJ
12 documents.

13 THE COURT: They have the interrogatories?

14 MR. CHERRY: The interrogatories were produced a
15 year ago, and they have been supplemented as we have gone
16 along, but that lays out all the detail of every competitor
17 meeting, everything relevant to wire harness. They have said
18 repeatedly they have the cooperation of the leniency
19 applicant, they have the cooperation of the settling
20 defendants, they have everyone's initial disclosures, they
21 have all of that.

22 In terms of looking for some connection between
23 wire harness and other cases it is also relevant that they
24 have the DOJ documents from a number of other products from
25 initial -- the instrument panel clusters, the heater control

1 panels, fuel senders were all produced approximately a year
2 or so ago, that have had all of that. If there is some
3 connection they should have seen it. So they have had lots
4 of discovery. I think what they are referring to is they
5 have served document requests for other discovery and there
6 have been meet and confers about that. I think most issues
7 have been resolved. We don't -- for Denso we have no
8 outstanding issues, we are just exchanging ideas on search
9 terms which we are combining and we are going to be ready to
10 go, and we are already in the process of producing hard copy
11 documents, so that's going ahead already.

12 The one thing we haven't had is any depositions.
13 We have been wanting to take depositions. I think we were
14 here back in February and we needed to close the gap on a
15 couple issues for the deposition protocol. Since then they
16 have refused to talk to us about a wire harness deposition
17 protocol. They have insisted that any discussions be based
18 on an all-product all-case basis. We have said that's not
19 what the supplemental discovery plan requires, and we want to
20 just close the gap on these last couple issues for our
21 deposition protocol and take some depositions, but we haven't
22 been able to do that.

23 THE COURT: What about these third-party
24 depositions where people are asked to come in multiple times?

25 MR. CHERRY: Yeah, Your Honor, we agree that there

1 should be efforts by everyone here to find efficiencies and
2 to minimize burdens, especially on third parties, but that
3 doesn't mean that we stay all depositions until the last plea
4 is ever filed and the last case filed and that moves into
5 discovery, that could be years from now. And we can't hold
6 up the early cases, wire harness is in discovery, we ought to
7 have a class cert schedule. We shouldn't sit on the
8 sidelines now idle for years waiting for that to happen. We
9 should look for ways to be efficient but we should go ahead
10 and take the discovery we need. The first four cases, and I
11 think there may be a couple coming up behind us, we are ready
12 to do that, we can do that. If others want to participate we
13 are happy to talk to them, but we need to get those subpoenas
14 out, take that discovery, and we can do that for multiple
15 products. And there will be products you have pushed ten
16 others forward that are in the motion phase, at some point
17 here they may be in discovery together and they can also look
18 for ways to coordinate among themselves. So this is not
19 something that is going to be 29 or 30 times, but it may be
20 done two or three times over the next several years as cases
21 are in a similar procedural posture and they need that
22 evidence.

23 If something has been produced once before like the
24 cars that are sold downstream that's not a burden, just give
25 us another copy or even the defendants can give the other

1 defendants a copy. I mean, I think the burdens are
2 overstated but we can certainly look for ways to minimize
3 that burden but the answer is not just indefinite delay.

4 And the other thing, this idea that they don't know
5 what the conspiracies are and they may want some big mega
6 trial of who knows how many conspiracies and products is
7 completely inconsistent with their complaints. They are
8 filing complaints -- they are filing new complaints. They
9 amended the wire harness complaint three weeks ago, and after
10 all of the discovery I have mentioned they filed new amended
11 complaints that still say that there is a single conspiracy
12 involving wire harness products involving the named
13 defendants, that's their case. Now they say they have just
14 learned something new in the last few months. Well, that
15 isn't in their complaint they filed three weeks ago. The
16 case is a single conspiracy involving wire harness products,
17 and that is also not reflected in the settlements they are
18 reaching. They are asking you to approve settlements that
19 are premised on there being single conspiracies for each
20 product involving certain defendants, and that's why those --
21 they say those settlements are fair and reasonable, and so
22 they know enough to make that determination in their
23 complaints they're filing still today and in the settlements
24 they are asking you to approve, and that's also consistent
25 with every plea the DOJ has reached. The DOJ has been

1 investigating this -- they have evidence from everyone. They
2 have been investigating this for five years probably now, and
3 they still allege separate conspiracy -- they -- they say
4 they have found separate conspiracies involving separate
5 products after all of that investigation. So that's the
6 case, Your Honor, and that's the case they have alleged that
7 they have pled in their complaints.

8 They basically just want to put off discussion of a
9 class cert schedule but then they want to jump ahead years to
10 a trial schedule which we think just makes no sense. Someday
11 if we are on a -- if a trial is approaching and they have
12 certified a class, we know what that class is, who is in, who
13 is out for the wire harness products, and they've withstood
14 summary judgement and we know which claims withstood summary
15 judgment, what states they can represent. You will remember,
16 Your Honor, at the motion to dismiss we pointed out they
17 don't have plaintiffs representing most of the states and
18 some courts have addressed that at a motion to dismiss stage,
19 and Your Honor wanted to address that at class cert. Well,
20 that's going to be addressed at class cert, and we don't
21 think they can represent a number of these states even if
22 they can go forward with some, and there may be opt outs. We
23 don't know what the wire harness case will look like someday
24 so it is premature to talk about trial plan, but we should
25 set a class cert schedule, we need a schedule to push this

1 case forward.

2 And what we see is that when we do have a schedule
3 and we have to push forward and accomplish something then
4 things happen; we find a way to be efficient, we work
5 together. You know, they proposed a -- in their initial
6 filing a streamlined process for filing motions to dismiss.
7 Well, Your Honor didn't have to grant that but we have worked
8 something out on our own, and you will notice the last set of
9 motions were much more streamlined and efficient, and I think
10 in ten cases there was a single brief filed on state law
11 issues. So, you know, when we push these cases forward we
12 have an incentive to find a way to be efficient, minimize
13 burdens on everyone, and I think the same thing will happen
14 if we can push wire harness forward, let it go forward, and
15 we are in discovery, let's go forward with that discovery,
16 let's set a class cert schedule, work towards that class cert
17 schedule, a ruling there will inform other cases, we won't be
18 going through this from scratch 29 times, we learn from what
19 we do in wire harness but only if we allow that to happen and
20 we push the case forward and don't bog it down indefinitely.

21 THE COURT: I would like you to address the risks
22 that I asked Mr. Burns about in certifying the wire harness,
23 and, one, he talks about expert-driven cases and problems
24 with that. Could you --

25 MR. CHERRY: Yeah. Frankly, I don't see the

1 relevance that there may be two or three products in a car
2 that are affected by separate conspiracies involving separate
3 groups of defendants. Any one of these cases is going to
4 have to figure out what happened in that particular case with
5 that particular product, and they are going to have to show
6 passthrough -- they are going to have to show impact on their
7 class members at both of the auto-dealer class level and the
8 end-payor class level.

9 THE COURT: Is there a difference in impact --
10 maybe this is something that has to wait for the expert, but
11 as I see it they are saying well, if it is one part it may
12 cost X dollars impact, but if there are multiple parts maybe
13 it is less or more or something because there are multiple
14 parts so --

15 MR. CHERRY: Your Honor, as long --

16 THE COURT: It really gets to the damages.

17 MR. CHERRY: The fact that there are separate
18 conspiracies and there are different groups of defendants
19 they are going to have to address that on a part by part
20 basis to know, you know, what the impact was and who has
21 responsibility for it, and even if there is overlap of a
22 defendant in multiple cases if there are separate
23 conspiracies involving different groups of defendants they
24 are still going to have to address that on a part by part
25 basis, whether there is one part, two parts, three parts,

1 they are going to have to do that.

2 Frankly, I think Your Honor has noted the burden
3 involved in that and how difficult that is going to be there,
4 and there are a number of cases we have cited where cases
5 have failed to be certified because of end payors or the
6 retailers' inability to meet that burden, and I think it's
7 going to be a very difficult burden for them here. I think
8 frankly a lot of what you are hearing is because of that,
9 they understand that they are going to have great difficulty
10 doing that and they are trying to really avoid coming to
11 grips with that by delaying class certification indefinitely,
12 by sort of lumping together multiple cases that are the way
13 they have pled them, are separate cases, and we think that's
14 inappropriate. They are ultimately going to have to deal
15 with the burden here, and we think we need a schedule to get
16 to that now instead of weed out --

17 THE COURT: I'm sorry. You propose a schedule
18 where defendants certify that you have substantially
19 completed document production?

20 MR. CHERRY: Yes.

21 THE COURT: That's kind of a start date for the
22 schedule?

23 MR. CHERRY: Well, that's how you get to the
24 deadline.

25 THE COURT: Then you are saying four months after

1 that --

2 MR. CHERRY: Yes. We have under our schedule --
3 well, actually when we were here I think in February, Your
4 Honor, we were talking about schedules, and Your Honor
5 suggested six to nine months might be appropriate following
6 lifting of the stay. And what we have proposed is that we
7 will have completed document production between four and five
8 months from now and then they would have an additional
9 120 days, so another four months after that, so basically
10 that's nine months right there which is what Your Honor
11 suggested, and we are months after the lifting of the stay,
12 so we believe that's plenty of time to brief class cert. But
13 again you don't hear the end payors and auto dealers saying
14 we need two or three more months, they say I'm not going to
15 give you a schedule, give us months to think about it after
16 you've asked for a schedule time and time again.

17 THE COURT: Well, what they are asking for is to
18 wait until the next status conference I think to propose --

19 MR. CHERRY: To propose something, but you have
20 been asking since February.

21 THE COURT: You are saying by the next status
22 conference you will basically have produced all of your
23 documents or close to it?

24 MR. CHERRY: We should be very close to that but,
25 Your Honor, there is no reason to wait. The idea of

1 certifying substantial completion should not be sort of a
2 start date of how we start thinking about this process, for
3 instance, for depositions. They do have 12 million of the
4 most important documents, and we've also proposed to them all
5 along in these meet and confers that we are perfectly willing
6 to front load any custodians they want. They have our
7 interrogatories, they know who did what, and if there are
8 people that they want to depose first, we'll produce their
9 documents first. We can do this on a rolling basis and in
10 whatever order they want, and so we can start with
11 depositions and get going on that and not wait until
12 everything is done before they start with a single
13 deposition.

14 THE COURT: Okay. And the question I have for you
15 under your certification is who determines if you are
16 substantially completed, would that create arguments?

17 MR. CHERRY: No, Your Honor, I don't think so. I
18 mean, I think given all that they have requested and all that
19 we have agreed to do there is going to be a lot of work
20 involved, and I think the idea is there may be things
21 dribbling in at the end, you know, you may -- always may find
22 another document or two but we can't wait forever to get
23 going on this. So there will be a point here where we have
24 produced and for all intents and purposes we are done, we've
25 done it and that's what we mean.

1 THE COURT: Okay. Thank you.

2 MR. CHERRY: Let me see if there is anything else
3 here? I think that's it. I mean, Your Honor, just focusing
4 on the trial plan we have addressed this in our briefs but,
5 you know, we do see significant problems, we think it is
6 completely unworkable, and nowhere in there do we see any
7 point where there is a determination of the impact to either
8 the auto dealers or the end payors. I mean, if you look at
9 phase one, two, three, four never is that determined whether
10 any particular auto dealer or any particular end payor
11 would've impacted separate antitrust injury at all. And they
12 would have that worked out among themselves after the
13 defendants are excused from the room having written a check,
14 and there is no case that has ever allowed that, it is
15 contrary to all the cases. In fact, the cases they cite --
16 every case they cite that they say supports that proposition
17 actually has an initial determination of impact which -- of
18 liability which includes impact and then a separate
19 proceeding involving individualized damages at which the
20 defendants, of course, participate and get to assert their
21 defenses against the particular individual plaintiffs, so
22 none of their cases support that.

23 Your Honor, I think that's all but, again, we do
24 think the best way to go here really is just to get a
25 schedule in place. Thank you.

1 THE COURT: Thank you.

2 MR. NICOUD: Your Honor, George Nicoud representing
3 defendants Mitsuba Corporation and America Mitsuba.

4 We on behalf of a number of defendants submitted a
5 filing regarding what I guess we are now calling a
6 case-management proposal with respect to class certification.

7 I will be very brief. We are not seeking to become
8 part of the wire harness case but our concern from being in
9 some of the later cases is if we just keep kicking the can
10 down the road we have no idea when our cases will ever move
11 forward, we are sort of stuck behind the earlier-filed cases
12 and we endorse the view you heard expressed earlier from
13 Mr. Cherry that the way to start solving problems is to get a
14 schedule, start working on it and the parties will confer.
15 Admittedly there are challenges, we are going to have to work
16 through them but the way to make it happen is to get started.

17 THE COURT: Thank you. Mr. Burns?

18 MR. BURNS: Just briefly, Your Honor. Your Honor,
19 what you have heard from my friend Mr. Cherry, and I mean
20 that, Mr. Cherry is a good lawyer and I respect him, is
21 exactly not how to run this case. What you heard from
22 Mr. Cherry is we are the defendants, let us define the
23 plaintiffs' case, it is a single conspiracy, trust us. We
24 are the defendants, let us tell you when we are done with our
25 document production, trust us. We are the defendants, none

1 of our witnesses are going to say anything inconsistent with
2 our interrogatory responses. You are not going to find out
3 from any third parties that anything we have said is
4 inaccurate or untrue.

5 Your Honor, I have never been in a case like that
6 and I don't think it is this case either. We are the
7 plaintiffs, we should be allowed to define our case. You've
8 seen what we've discovered, you've seen what Mr. Cherry
9 didn't talk about, about how he and three other defendants
10 occupy 26 of 29 cases. You've seen the overlap between parts
11 and cars. We have to be able to address those issues, Your
12 Honor.

13 Mr. Cherry also said there is no reason to look at
14 other parts. There is no economic reason, their economists
15 aren't going to have to deal with this. I was a little bit
16 confused by his answer. I'm not a seer, Your Honor, but I
17 can guarantee you that whenever we get to class certification
18 Mr. Cherry and his experts are going to come up here and they
19 are going to say you have to take into account the price
20 inputs that go into the value of that vehicle. Well, isn't
21 it sort of logical to assume that the price of a price-fixed
22 heating control panel may be little different than an
23 ordinary heating control panel. How do we account for those
24 in vehicles where we are looking at at least four, if not
25 more, price-fixed parts in the vehicle? This is clearly an

1 issue that would seem to have some import to the analysis.

2 Mr. Cherry also said that, look, all that stuff we
3 said about restitution, okay, we only meant that for the
4 direct purchasers and none of them are in here today. Well,
5 I think Mr. Spector represents the direct purchaser class, I
6 think they are seated beside me, and more to the point, Your
7 Honor, I understand their position, I understand they want to
8 avoid liability to my clients, to Mr. Spector's clients, but
9 I also understand what the Department of Justice has said
10 since day one in this case, American consumers and American
11 businesses paid more for automobiles because of the
12 conspiracies that their clients entered into. That is what
13 we are here to prosecute, it is what we are here to claim for
14 our clients, and we need to be able to do it in a way that
15 makes sense and that allows justice to be done, and we will
16 do that by discovering in this case how broad these
17 conspiracies stretch, what parts are implicated by these
18 conspiracies, and how it affects the compensation to our
19 clients.

20 Finally, Your Honor, you heard from Mr. Cherry,
21 this is all going to work out, we are going to produce our
22 documents by January, even though we haven't really produced
23 any by now to the plaintiffs in response of their document
24 requests, but we are going to produce them all by January and
25 then, you know, four months later they can do class cert.

1 Okay. But what happened about depositions? I mean, is
2 Mr. Cherry going to come up here and say, or any defendant, I
3 don't want to personalize this, but we will make it really
4 efficient, we will bring the 50 custodians that we identified
5 over from Japan so you can take their depositions here in
6 Detroit. We haven't heard that proposal and I don't think
7 you will. There is a lot of work that needs to be done even
8 after they tell us that they have completed their document
9 discovery. Their plan doesn't make sense, Your Honor. We
10 need the time to figure out what does and that's what we are
11 asking for. Thank you, Your Honor.

12 THE COURT: Okay.

13 MR. CHERRY: Can I just respond briefly?

14 THE COURT: Wait a minute. We have some other
15 defendant?

16 MR. BARNES: Yes, Your Honor. My name is
17 Donald Barnes, and I represent the G.S. Electeck defendants.

18 I would like to bring another perspective to the
19 attention of the Court relating to the debate that's been
20 going on about class certification, number one. We are
21 perhaps the smallest defendant in the wire harness cases. We
22 pled guilty. As the Government acknowledged at our
23 sentencing hearing, there is no evidence to link us to any
24 other conspiracy involving any of these other parts. And
25 apparently there still isn't after additional years of

1 Government investigation, after the plaintiffs have received
2 millions of documents from co-defendants, we are not part,
3 there is no evidence that we are part of any other auto part
4 conspiracy. We therefore would have an objection to any
5 class-certification proceeding that lumps us into an alleged
6 conspiracy involving other auto parts. We believe that if
7 that happened we would have a Constitutional issue to bring
8 to the attention of the Court.

9 I sort of look at this case in an old-fashion way.
10 It seems to me that historically under the rules courts
11 should make class-action determinations at the earliest
12 practicable date. I'm not here to argue about scheduling, we
13 will go along with whatever schedule the Special Master and
14 Your Honor devises, but there is no reason in our opinion to
15 delay the class certification on the wire harness, quote,
16 conspiracy.

17 And I might add that the way wire harness is
18 defined in the complaint or I believe 13 different parts we
19 only produce one of the 13 parts. To tie us to any other
20 part the plaintiffs would have to show that G.S. Electeck
21 knowingly and intentionally entered into an agreement to
22 violate the antitrust laws and to fix the price of that
23 particular product. That's a threshold issue that we don't
24 believe they can sustain. They can't sustain their burden.

25 To summarize, Your Honor, we would like to object

1 to any class certification that includes anything other than
2 wire harness.

3 THE COURT: Okay.

4 MR. BARNES: That's our position. Thank you.

5 THE COURT: All right. Thank you. Mr. Cherry?

6 MR. CHERRY: Yes. Thank you, Your Honor.

7 Just to address Mr. Burns' comment about the
8 defendants characterizing the plaintiffs' case, we are not
9 characterizing the plaintiffs' case, we are reading their
10 complaint, and they just filed a complaint three weeks ago,
11 that's their case, that's their wire harness case, and they
12 allege a single conspiracy involving certain wire harness
13 defendants involving wire harnesses. And so it is not one
14 characterizing, paraphrasing, putting words in their mouth;
15 we are just reading their complaints and looking at the
16 settlements they are reaching which, again, are their words.

17 THE COURT: Okay.

18 MR. CHERRY: Okay. And he mentioned an expert may
19 need to look at the price points, the other price points.
20 The price points are what they are. The parts cost what they
21 cost other than the part issue in a particular conspiracy
22 that they are trying to address, and they will have to prove
23 regardless of whether there are other parts subject to
24 separate conspiracies they are still going to have to focus
25 on the product that is at issue in the particular conspiracy

1 in the particular case regardless as I mentioned.

2 In terms of the point about Mr. Spector
3 representing some direct purchasers, that may be the case but
4 they certainly aren't the direct purchasers that were at
5 issue in the plea agreements, and I think we have long since
6 identified who the one direct purchaser was for our plea
7 agreement, and they are not represented by anybody in this
8 room.

9 Mr. Burns brought up a point about where
10 depositions would take place. That's something that was
11 resolved in the initial discovery plan several years ago, we
12 don't see any reason to revisit it, but we are certainly
13 willing to talk about ways of doing depositions one after
14 another to move things along, but again the point shouldn't
15 be all of this talk and delay figuring out the perfect way to
16 do anything, it is just let's get going, take some
17 depositions. This will work itself out if we just get going.

18 THE COURT: Okay.

19 MR. CHERRY: Thank you, Your Honor.

20 MR. SPECTOR: Your Honor, if I might?

21 THE COURT: Mr. Spector.

22 MR. SPECTOR: Good morning, Your Honor.

23 Eugene Spector on behalf of the direct-purchaser plaintiffs.

24 Very surprised to hear that we are in this
25 courtroom not representing people that were injured by the

1 conspiracy. We certainly do.

2 THE COURT: I don't think that's what was said, but
3 the claim deals with a very specific defendant in terms of
4 restitution. We know that in the criminal law area.

5 MR. SPECTOR: That's correct, Your Honor, but for
6 Mr. Cherry to say that the direct purchasers who were the
7 victims of this conspiracy aren't represented here is
8 incorrect. We do represent them, and you can see that we do
9 from just looking at the Nippon Seiki settlement where we
10 already have our opt-out provisions. We only have two of the
11 OEMs that have opted out, all of the others are part of the
12 case. So we do represent direct purchasers who are OEMs who
13 were the targets according to Mr. Cherry and the wire harness
14 defendants of the conspiracies that are at issue in these
15 proceedings. So that's the one thing I did want to make sure
16 I mentioned.

17 THE COURT: Okay. Thank you.

18 MR. SPECTOR: The other thing that I would like to
19 mention, Your Honor, is that we have proposed a
20 class-certification schedule, and since that has now come up
21 and I saw it a little later in the agenda but it has been
22 discussed so I thought it might make sense to do it now if
23 Your Honor would like me to?

24 THE COURT: Yes, go ahead.

25 MR. SPECTOR: If not, we could wait.

1 We have proposed a schedule that we think is
2 realistic. We proposed it in the wire harnesses case because
3 that's the one that we are in with a schedule. Does that
4 mean that we don't think that there is a possibility that the
5 conspiracy might be wire harnesses plus some other things? I
6 can't say we don't think that that's a possibility, but we
7 are -- we filed on the basis of that single product, the wire
8 harness products. It is actually I think 13 products as
9 Mr. Burns has said so it is a conspiracy of multiple parts.
10 We are prepared to proceed on that basis if that's what the
11 Court wishes to do. We proposed a schedule, Your Honor, that
12 talks about using time efficiently and realistically. If the
13 defendants will certify that they have produced their
14 documents, not substantially produced them but produced their
15 documents, from that point on we would need we believe at
16 least 210 days to take -- which would be -- to take
17 depositions.

18 THE COURT: Here?

19 MR. SPECTOR: Here, if it is all here in the United
20 States. If it is going to be in Japan then it is another
21 90 days and that's because of the procedural hurdles that we
22 have to face in Japan in terms of scheduling with consulates
23 and at the embassy in terms of the time that we are limited
24 to in a given day.

25 THE COURT: How many depositions are you -- I mean,

1 I know it is hard to answer, I'm not asking for a direct
2 amount but, you know, just a guesstimate.

3 MR. SPECTOR: I will tell you this, Your Honor, we
4 have identified over 210 custodians of relevant material
5 documents for purposes of this case, so it is quite possible
6 that we will be taking that number of depositions, I don't
7 think so. I would suggest to Your Honor that it would
8 probably be with eight families of defendants -- or ten
9 families of defendants I would guess 100 to 150 depositions,
10 that would be my guess. Hopefully it could be less, but with
11 that number of identified custodians and with the number of
12 documents we have seen, that to me would not be an unusual
13 number for ten families of defendants.

14 THE COURT: Okay.

15 MR. SPECTOR: And so that takes time. If we take,
16 for example, a Japanese-language deposition, Your Honor, that
17 is under the current proposal, I think, planned 12 hours over
18 two days. Well, 12 hours over two days, if you have 20 of
19 those depositions --

20 THE COURT: Somebody's moving to Japan.

21 MR. SPECTOR: If you have 50 of the depositions are
22 in Japanese language in Japan, that's going to take months,
23 and the proposal that we have made I think is aggressive but
24 reasonable, and it doesn't mean that I -- Your Honor, it
25 doesn't mean that I wouldn't be standing up here again nine

1 months from now saying, you know, Judge, we tried to do it
2 but because of A, B and C we can't accomplish it, we need
3 another couple of months. At least we would have a schedule
4 in place that would require us to come to you again and say
5 why we can't complete it rather than simply putting it off or
6 not having a schedule, so we've tried to be realistic.

7 So once that's complete we would like 60 days from
8 the completion of depositions to be able to file our class
9 certification motion with expert reports, and that's not --
10 that's also a fairly aggressive schedule considering the
11 amount of information that is going to be involved but, you
12 know, if you look at the proposal that the defendants make,
13 Your Honor, they give us four months from the substantial
14 completion of their production of documents to take the
15 depositions, have our experts review all of the material and
16 file their report, and for us to then file our motion for
17 class certification. And to show you how real -- unrealistic
18 that is, how much time did they ask for themselves to just
19 respond to that? Four months. Their proposal is totally
20 unreasonable.

21 THE COURT: Okay.

22 MR. SPECTOR: Thank you, Your Honor.

23 MS. WEAVER: Good morning, Your Honor.

24 Leslie Weaver with Green & Noblin on behalf of the public
25 entities in this class.

1 I just want to weigh in very briefly here. We
2 filed our first complaint on February 20th, 2014, and so we
3 are trying to get up to speed and coordinate with everybody
4 but what, in fact, happened was the defendants make us serve
5 through the Hague defendants that had already accepted
6 service in the case. So we filed our amended complaint on
7 Friday, and we have agreed to a briefing schedule with the
8 defendants, which you approved earlier this week -- or rather
9 last week. We are requesting a hearing date on January 28th,
10 and that was later in the schedule, but as we have been
11 discussing scheduling and what's happening here, it is clear
12 to us on behalf of the municipalities and states that, you
13 know, for us to come into the case you, I imagine, would want
14 to have ruled on the motion to dismiss. The defendants have
15 taken a position that we can't even sign off on any of these
16 protocols although we have been participating in all of the
17 conference calls.

18 So from our perspective it makes sense to just
19 allow us until the next status conference so all of the
20 plaintiffs can get on the same page about what makes sense in
21 terms of class cert, just as the plaintiffs here today have
22 proposed. I myself am a huge proponent of deadlines because
23 I like moving my cases forward and getting relief for the
24 plaintiffs, but there are just so many issues at play here,
25 as Mr. Spector just laid out, there are going to be a lot of

1 defendants, and with Master Esshaki just assuming his
2 position more or less fairly recently, it really might be
3 reasonable to allow us all a moment to sit down and come to
4 you with something clean and direct that you can approve.

5 Thank you.

6 THE COURT: Wait a minute. There was somebody else
7 here on plaintiffs' side.

8 MS. KELLY: Cindy Kelly, Your Honor, for Ford.

9 Very briefly, we do not take a position with
10 respect to the class-certification schedule. However, we do
11 believe that the discovery schedule that has been proposed by
12 defendants is entirely unrealistic. They have proposed
13 120 days after their document production is substantially
14 complete as the written discovery deadline and for the
15 completion of depositions. For the reasons that Mr. Spector
16 has already said, we believe that 120 days to complete
17 depositions is entirely unrealistic especially when we don't
18 yet know how many depositions there will be, what the
19 deposition protocol will be or the scope of those
20 depositions. We think the minimum is 210 days. We actually
21 think it is more logical to wait until we know the number of
22 depositions and the deposition protocol to actually set a
23 date, but we do believe that 210 days is the minimum.

24 We also just can't have a written discovery
25 deadline which is the same date as the end for depositions

1 because under our case-management plan we need to serve all
2 written discovery 90 days prior to the deadline for written
3 discovery, and so if you have the same date you essentially
4 don't have the opportunity to take and complete your majority
5 of your depositions before having to serve your written
6 discovery, so they have to be staggered, and we would propose
7 at least a 90-day staggering, which Mr. Spector has proposed
8 that.

9 THE COURT: Okay.

10 MS. KELLY: Thank you, Your Honor.

11 MR. CHERRY: Just a couple last words?

12 THE COURT: Briefly.

13 MR. CHERRY: Just responding to Mr. Spector, I do
14 think we need to get past this idea that we are somehow
15 waiting until all the documents -- every last document is
16 produced before we think about starting with the depositions.
17 They have had plenty of documents, plenty of information, and
18 as I said, we are perfectly willing to front load production
19 of documents relevant to certain custodians so that we should
20 start with depositions, we should have started by now, but
21 start immediately and get going on this so it is not like we
22 are trying to squeeze in all the depositions in that little
23 period at the end after documents are done.

24 THE COURT: Okay.

25 MR. CHERRY: And the second thing is they don't

1 need every single deposition of every single custodian to
2 deal with class cert, right, I mean, so we are about
3 efficiencies and minimizing burdens, there are overlapping
4 issues here, overlapping custodians, you know, three people
5 who are at the same meeting and they don't need to depose
6 every single person necessarily just to deal with class cert.

7 And with respect to the other issues, I think -- we
8 also don't think 210 days are necessary, certainly we don't
9 think they need 300 days just because some of the depositions
10 are taking place in Japan.

11 THE COURT: Okay.

12 MR. CHERRY: Thank you, Your Honor.

13 THE COURT: All right. I think this is perhaps a
14 very critical stage in this litigation, and I have given it a
15 lot of thought and, of course, I have not discussed it with
16 the Master and I think these discovery deadlines need to be
17 gone over with him, but I believe I need to make one ruling
18 now and that is -- I appreciate what the plaintiffs -- the
19 work that you have to do in all of this, but you have, in
20 fact, filed complaints, amended complaints,
21 consolidated-amended complaints all alleging separate
22 conspiracies for each part. Whether you file something later
23 and whether I allow you to do that I am not addressing, but
24 we have had wire harness for some years now and I think this
25 case needs to proceed, and we will proceed with the class

1 certification for wire harness. In order to do that we need
2 to have the schedule, and I'm going to ask Mr. Esshaki to
3 determine that schedule, and what I'm looking at is a
4 schedule that will determine how many months -- I mean,
5 basically between the direct-purchaser plaintiffs and the
6 defendants there's a difference of four to seven months, I
7 believe, but to determine a realistic number of days after
8 plaintiffs -- excuse me, defendants, each of them, have
9 submitted all of their documentation.

10 I do believe that we could include that word
11 substantially and let's see how that works. I also believe
12 that the depositions can begin. I don't know, they could
13 begin as soon as you get all of -- substantially all of the
14 information from the defendants, and actually they could
15 begin now because if you do them on a rolling basis and ask
16 for and -- excuse me, and defendants submit their
17 documentation on a rolling basis for you then you can begin,
18 but so that's basically my ruling, we will go forward with
19 wire harness and we will have you meet in the next few months
20 with the Master and determine an exact schedule which we'll
21 discuss at our January 28th meeting.

22 I also want the document production to continue by
23 defendant. All the requests are in? Mr. Cherry, are the
24 requests in by the plaintiffs except for, of course, the city
25 and the governmental entities?

1 MR. CHERRY: Yes, and we have worked through all of
2 our issues and I think we are just putting the finishing
3 touches on search terms, which don't hold up hard-copy
4 documents but the ESI, and I think everyone is moving
5 forward.

6 THE COURT: So I want that to continue while you're
7 working out the schedule. There is no need for it not to
8 continue while the schedule is worked out because the
9 schedule will be based off of defendants' substantial
10 compliance. All right.

11 Mr. Esshaki, do you have anything that you wish to
12 ask or anything regarding the schedule or meetings?

13 SPECIAL MASTER ESSHAKI: No, Your Honor. I think I
14 understand fully what you just said so I will be available.

15 MR. SPECTOR: Your Honor, if I might?

16 THE COURT: Mr. Spector.

17 MR. SPECTOR: I don't think we can proceed with
18 depositions at this point because we do not have a deposition
19 protocol in place and that's --

20 THE COURT: All right.

21 MR. SPECTOR: And that's the other thing that has
22 to be worked out.

23 THE COURT: Right.

24 MR. SPECTOR: So I think between now and
25 January 28th we should be able to hopefully get that

1 resolved. I know there are some issues still being
2 negotiated, and we'll have to make it apply apparently to the
3 wire harness case because we are going to move ahead in wire
4 harness.

5 MR. CHERRY: Yes, Your Honor. What we would ask is
6 that the parties immediately meet and confer to try to -- we
7 just have a few remaining issues, try to close the gap on
8 that, and if within 30 days or some period of time we haven't
9 come to an agreement, we present the issue to Mr. Esshaki and
10 just have it resolved.

11 THE COURT: I think that that's fair. I think if
12 you meet and confer, and then Mr. Esshaki will meet with you
13 if necessary to set a protocol.

14 MR. CHERRY: Thank you.

15 MR. WILLIAMS: Steve Williams for end-payor
16 plaintiffs.

17 We will do that, and this relates to the deposition
18 protocol, but the issue I want to raise, it may be within the
19 scope of that protocol even if wire harness goes along on its
20 own there is overlap so, for example, discovery started in
21 heating control panel and fuel senders, same defendants, we
22 are going to have to address eliminating duplication of their
23 witnesses that relate to those cases. They have to give us
24 the documents for us to do that, but for us more importantly
25 we have 29 cases, we assume we may have more, we end-payor

1 plaintiffs who bought a car don't think we should be subject
2 to being deposed in wire harness and then again in the next
3 case.

4 Our view would be one deposition of that plaintiff
5 for every case they are in, defendants can appear if they
6 want. And what I would suggest, and I can provide the orders
7 on this, is in cases of this nature where there are class and
8 direct and multiple plaintiffs you don't repeat the
9 deposition again. So if we produce our plaintiffs for
10 deposition once now during the wire harness discovery, we
11 don't want somebody on the sidelines to come back in a year
12 and say now it is occupant safety, we want that person again
13 to ask them all of the same questions. So we are going to
14 suggest and we will try to work this into our protocol that
15 they get deposed once.

16 THE COURT: Let me just indicate, you will try to
17 work it into the protocol, that's fine, but I don't see how
18 that is going to work because there is not discovery yet
19 done, I mean, or document production on these other parts.

20 MR. WILLIAMS: But this is the plaintiff being
21 deposed, and this -- this comes back to what we have been
22 talking about, but it is the plaintiffs who's deposition
23 being taken, so --

24 THE COURT: You are not talking --

25 MR. WILLIAMS: My plaintiffs have produced their

1 documents, they have produced everything, they have nothing
2 more, they should just be deposed once.

3 THE COURT: Mr. Cherry?

4 MR. CHERRY: Yes, Your Honor. As I said, I think
5 we all want to minimize burdens on everyone including the
6 plaintiffs and we will do our best to depose plaintiffs only
7 once, particularly the end payors, I mean, they bought a car
8 and we find out what car they bought and we are good. So I
9 think we would take those depositions as soon as possible
10 now, and we will try to correspond and coordinate with the
11 other defendants.

12 THE COURT: I think it is a very excellent issue to
13 address now for the plaintiffs, I hope you can do it only
14 once that you can work into our protocol. If it happens that
15 you can't I can't imagine why for end-payor purchasers, I
16 mean, they are not going to know the individual part.

17 MR. CHERRY: It may be somebody would come along
18 and be able to show good cause down the road if they
19 bought --

20 THE COURT: That could very well be.

21 MR. CHERRY: But we would certainly do our best,
22 and I think it may be less perfect at the auto dealer level
23 or direct purchasers where there are replacement parts, they
24 are part specific conduct and people, but we will do our best
25 and should do our best to minimize duplication and hopefully

1 that just won't need to occur.

2 THE COURT: Okay.

3 MR. CHERRY: Thank you, Your Honor.

4 THE COURT: Yes?

5 MR. BARRETT: Your Honor, Don Barrett for the auto
6 dealers.

7 We strongly agree with the end payors about the
8 issue of repeated depositions. Generally speaking, our
9 plaintiffs are small businessmen and it is -- it would be
10 abusive to make them over and over and over 29 times -- you
11 know, the idea is to run them out of the litigation and --

12 THE COURT: Nobody is going to do that. I don't
13 think you need to worry about that. The effort will be to
14 not duplicate discovery. I think we said that way back when,
15 and I really think that's still where it goes, and I think
16 with the Master's assistance in your meet and confers first
17 that you will be able to work that out. It certainly may be
18 that somebody is deposed twice two or three -- I mean, there
19 are things that we can't control but those things that are
20 within their control and we can proceed now with wire harness
21 we will work with an effort to not duplicate.

22 MR. BARRETT: Thank you, Your Honor.

23 THE COURT: All right. I think we have that
24 schedule for now. I would like to go back because there was
25 one thing I didn't do, which I believe was F, page 3 of the

1 report, and that is we are ready to set schedules in the
2 windshield wiper case; is that correct?

3 MR. HANSEL: Your Honor, if I may? Greg Hansel for
4 the direct-purchaser plaintiffs. Good morning, Your Honor.

5 Before we leave wire harnesses I wanted to bring up
6 an item at the top of page 3 of Your Honor's agenda, direct
7 purchasers' motion for leave to amend. Direct purchasers
8 filed this motion. The time to respond has passed, there was
9 no objection to the proposed amendment, so we would ask that
10 motion be addressed.

11 I spoke this morning with Mr. Barnes from
12 G.S. Electeck. Part of the purpose of the amendment was to
13 combine a separate wire harness direct-purchaser complaint
14 against G.S. Electeck into a single complaint, and then there
15 were three other parties added, one plaintiff and two groups
16 of defendants. There has been no objection so we believe
17 that whenever Your Honor --

18 THE COURT: Which item is that on the agenda
19 because my page number is different than yours?

20 MR. HANSEL: It is Roman numeral II (B) (1),
21 unscheduled pending motions.

22 THE COURT: Yes. I had a note on that, I didn't
23 get any response. Okay.

24 MR. HANSEL: Thank you.

25 THE COURT: So there is no objection to that, you

1 may present an order. I don't know which part you are going
2 on so --

3 MR. TUBACH: This is Michael Tubach on behalf of
4 the Leoni defendants. Good morning, Your Honor.

5 Following up on what was just raised, the unopposed
6 motion to consolidate is unopposed to file that amended
7 complaint. The direct purchasers also recently last week
8 filed a stand-alone complaint only against three Leoni
9 entities. It was filed three weeks after the Court deadline
10 for amending complaints. They have made no effort to show
11 good cause why they couldn't meet the deadline and we don't
12 think they could, but we will be moving to dismiss the
13 complaint. At the very least the plaintiffs should have to
14 try to show good cause for why they should amend the
15 complaint yet again when they just passed the Court-ordered
16 deadline to amend the complaint and simply filed a
17 stand-alone complaint currently assigned to Judge Goldsmith
18 but we expect will be reassigned to the Court.

19 THE COURT: Maybe I haven't seen --

20 MR. TUBACH: I don't believe it has been reassigned
21 to the Court yet, but I just want to alert the Court that we
22 will be moving to dismiss that complaint for failure to abide
23 by the court-ordered deadline.

24 THE COURT: Okay. If you do that hopefully you
25 will do it right away and we can get a response right away so

1 we can deal with that.

2 MR. TUBACH: We'll do it immediately.

3 MR. SPECTOR: We are prepared to deal with the
4 issue of the reason why the complaint wasn't filed until last
5 week.

6 THE COURT: Okay. So we will hear that hopefully
7 in January so we can move along on that. Okay. Molly, will
8 you make a note of that for January?

9 THE LAW CLERK: Yes, Judge.

10 MS. ROMANENKO: Your Honor, Victoria Romanenko for
11 dealership plaintiffs.

12 Just on behalf of dealership plaintiffs and
13 end-payor plaintiffs, we are in the same situation as the
14 direct-purchaser plaintiffs with regard to our third-amended
15 complaint. We filed our motion to amend on September 8th and
16 there has been no opposition, so we understand that similarly
17 to the direct-purchaser complaint our two amended complaints
18 are not opposed, so we would similarly request that the
19 orders be -- the orders be entered granting our leave to
20 amend.

21 THE COURT: No problem with that. They have not
22 been responded to, okay, so motion granted.

23 MS. ROMANENKO: Thank you.

24 MS. WEAVER: Just to close out the issue of the
25 hearing date on the motion to dismiss for the public

1 entities, we would request jointly January 28th. The order
2 did not actually set it for hearing on that date, but just
3 wanted to see if that is amenable to the Court?

4 THE COURT: On the motion to dismiss on the public
5 entities for January 28th, I don't know what the schedule is
6 regarding the response, if it is in --

7 MS. WEAVER: Yes, I can give it to you.

8 THE COURT: I think that's wonderful, we will put
9 it for the 28th.

10 MS. WEAVER: Perfect. Thank you.

11 THE COURT: What about the windshield wiper motion
12 to dismiss, anybody on that?

13 MR. BURNS: I don't think we have that on the
14 agenda.

15 THE COURT: You don't have that on the agenda?

16 MR. BURNS: No, Your Honor, we don't.

17 THE COURT: I just found that the windshield wipers
18 are ready to go. I just want to get your input on that
19 motion.

20 MR. CHERRY: You just want a schedule for that?

21 THE COURT: Yes.

22 MR. BURNS: We can work on a schedule.

23 MR. CHERRY: We can certainly agree to a schedule.

24 THE COURT: That's fine, just work out a schedule
25 and submit it to us so we can see when we can put it on.

1 Probably May.

2 MR. BURNS: Thank you, Your Honor. More broadly,
3 is windshield wipers the only case you want set for motions
4 to dismiss?

5 THE COURT: Well, that was the only one I found
6 that would be ready. If there are others that I have missed,
7 yeah, we could schedule it. We would like to move along as
8 soon as ready.

9 MR. RIESE: Good morning, Your Honor.

10 THE COURT: I think service was complete on
11 windshield wipers and not the others, at least the last
12 service in your status report.

13 MR. RIESE: Will Riese for end-payor plaintiffs.

14 We have completed service in a number of cases, so
15 we have a proposal of some cases we would like to move
16 forward on our motion to dismiss.

17 THE COURT: Wonderful.

18 MR. RIESE: So we have windshield wipers, air flow
19 meters, fuel injection systems, valve timing control devices,
20 constant velocity joint boots, electronic throttle bodies and
21 inverters, and we have served all the parties in those cases.
22 We have a proposal again for timing consistent with the
23 schedule you offered last time, so by November 10th we would
24 inform the Court of any new defendants that we intend to add,
25 November 17th we would file any consolidated-amended

1 complaints, by January 8th the defendants could file their
2 motions to dismiss, we would file oppositions by
3 February 23rd, and they could reply by March 9th. Again,
4 that's consistent with the schedule you entered last time for
5 the nine cases.

6 THE COURT: The last date was March --

7 MR. RIESE: March 9th for the reply.

8 THE COURT: Okay. Service was completed for all --

9 MR. RIESE: The end payors have served --

10 MR. CHERRY: I'm sorry. If you could just repeat
11 the dates?

12 MR. RIESE: Sure. So on November 10th we would
13 inform the Court of any new defendants that we intend to add.
14 November 17th we would file our consolidated-amended
15 complaints. January 8th defendants would respond or file
16 motions to dismiss. February 23rd we would file any
17 oppositions. March 9th would be reply.

18 THE COURT: So then it looks like they would be
19 ready for the next scheduling conference. Now, we have a
20 scheduling conference for January 28th, and I've got a
21 proposed date for May which we will get to in a moment.
22 Okay. Very good.

23 MR. RIESE: Thank you.

24 THE COURT: Thank you. Defendants okay with
25 those -- I don't know who the defendants are on those cases

1 but it is pretty much --

2 MR. CHERRY: I think the timing between -- to the
3 extent that we are in any of them -- sounds fine. I mean, we
4 would want to talk to the defendants, it does come right over
5 the holidays for the defendants, the motion due January 8th.

6 THE COURT: Well, let me have you -- if you have a
7 problem deal with the plaintiffs, ask the plaintiffs about
8 it, but I would --

9 MR. RIESE: We will give you two more weeks for the
10 holidays than we have, we accounted for that.

11 THE COURT: You can talk. The only thing I want to
12 be sure of is I have enough time to prepare, so you've got
13 March 9th and if we are May probably the middle of April at
14 the latest.

15 Let me ask on that, is service done on the auto
16 dealers and directs for that group?

17 MR. HANSEL: Your Honor, the directs has only filed
18 one of those cases, which is the wipers case.

19 THE COURT: Okay. Auto dealers?

20 MR. SPECTOR: I believe that is served, Your Honor.

21 THE COURT: Okay.

22 MS. ROMANENKO: Your Honor, with regard to auto
23 dealers, we believe we can wrap up service issues by the time
24 it is time to file an amended complaint just by stipulation
25 like we have been doing.

1 THE COURT: Okay. Great.

2 MS. ROMANENKO: Thank you.

3 THE COURT: Okay. We just want to make sure we get
4 them all in and don't lose a class. Okay. Anything else
5 with future scheduling of motions that are ready?

6 (No response.)

7 THE COURT: No. Okay. And what about the
8 dealerships' motion to file a third-amended consolidated
9 action, did we just do that?

10 MR. BURNS: We did, Your Honor.

11 THE COURT: Okay. I think on these motions the
12 motion to file a third-amended complaint for dealers and end
13 payors -- I wanted to ask, is the end payor one unopposed?

14 MR. BURNS: I believe it is, Your Honor.

15 THE COURT: It is?

16 MR. CHERRY: Yes.

17 THE COURT: Okay. These will be done by opinion
18 and order. There will be no oral argument on those so you
19 don't have to come in on those.

20 And the briefing schedule for Richmond, we have
21 talked about the public entity and that's all taken care of,
22 right?

23 MS. WEAVER: Yes.

24 THE COURT: Okay. The bearings, the Florida action
25 and service on that, what's going on with that?

1 MR. FRASER: If I could just speak from here?

2 THE COURT: Your name.

3 MR. FRASER: Tim Fraser with the State of Florida.

4 We have worked out a stipulation with the
5 defendants on service. They have filed a motion to dismiss,
6 and responses will be due -- the replies will be due just
7 before Christmas, so if the defendants want we'll have
8 argument on the 28th.

9 THE COURT: Okay. So we probably will be able to
10 hear that January 28th?

11 MR. FRASER: Yes.

12 THE COURT: Thank you. Then we have the new class
13 action, which is the heavy duty truck dealers.

14 MR. FRASER: And equipment.

15 MR. SPERL: Yes, Your Honor. Andrew Sperl from
16 Duane Morris.

17 THE COURT: How do you spell your last name?

18 MR. SPERL: Sperl, S-P-E-R-L.

19 THE COURT: Thank you.

20 MR. SPERL: We represent Rush Enterprises or a
21 number of subsidiaries of Rush Enterprises who are dealers of
22 heavy trucks and equipment. We filed in the bearings case a
23 case on behalf of them and on behalf of a proposed class of
24 truck and equipment dealers.

25 Just for clarification, this class is separate from

1 the auto dealers class that is already represented in this
2 MDL. This is heavy trucks, heavy equipment dealers.

3 We have filed in the bearings case, just looking at
4 the agenda regarding service, we are making good progress on
5 service, we have served by mail those defendants in our case
6 who have United States registered agents and we have an
7 agreement in principle with defendants regarding service of
8 the foreign defendants whereby service will be accepted by
9 counsel in exchange for an extension of time to respond to
10 the complaint.

11 THE COURT: All right. You also have a motion to
12 appoint interim counsel, right?

13 MR. SPERL: That's correct. We just filed that on
14 Monday, it didn't make it onto the agenda. I'm happy to
15 answer any questions about that. I'm not looking to add
16 anything to an already full agenda.

17 THE COURT: But you just filed it Monday so
18 defendants haven't had an opportunity really --

19 MR. SPERL: Yes, that's correct. It is an
20 unopposed motion but that's correct, I don't think anyone has
21 had time to --

22 THE COURT: I have read the motion and if there are
23 no objections filed you may present an order in the next
24 30 days if there's no objections filed. I do find the
25 firm -- you have 700 attorneys, 120 doing antitrust?

1 MR. SPERL: That's correct, Your Honor.

2 THE COURT: And I read the resumes of the
3 individual -- there were two I think?

4 MR. SPERL: Yes, Mr. Wayne Mack and Mr. Manly
5 Parks, both of whom regret not being able to be here today.

6 THE COURT: They have extensive experience in
7 antitrust and class-action suits, and I would have no problem
8 with them representing this group if there is no objections,
9 and I haven't gotten any objection -- well, it was just filed
10 but I haven't heard anything.

11 MR. SPERL: Thank you, Your Honor. There was a
12 proposed order attached to the motion, would you like us to
13 submit that separately on the docket?

14 THE COURT: I would like you to submit it
15 separately and wait 30 days from today's date just to be sure
16 there is nothing, you know, yeah, it is not on the docket yet
17 obviously. Okay.

18 MR. SPERL: Thank you, Your Honor.

19 THE COURT: The next item on the agenda is the
20 switches with the Panasonic defendant.

21 MR. WILLIAMS: Steve Williams for the end payors,
22 and I think for the dealers on this.

23 For the next three really, switches, steering angle
24 sensors and HID, at least as it relates to Panasonic it is
25 the same issue, it is simply that in light of the agreement

1 that we have reached and the efforts underway now to prepare
2 the final written conference of settlement agreement, their
3 time to respond to those complaints has been sort of
4 suspended, so that's the only issue with these next three
5 items.

6 THE COURT: I think I entered orders already on --

7 MR. WILLIAMS: Yes, you did.

8 THE COURT: -- on those, so that's the switches,
9 steering angles and the HID?

10 MR. WILLIAMS: Correct.

11 THE COURT: All right. The next item that we have
12 has to deal with the Master. I think -- do you want to take
13 a break at this point? I don't know how far you want to go
14 on? We will go on a little bit more. All right.

15 Mr. Esshaki, do you want to give a report with what
16 is going on with you?

17 SPECIAL MASTER ESSHAKI: Yes, thank you very much,
18 Your Honor.

19 First of all, I'm Gene Esshaki, as I said
20 previously. I have had an opportunity to work with a number
21 of local counsel in this community for 40 years. I have had
22 the opportunity to speak with a number of you on the
23 telephone conferences that we've conducted to date, and I
24 really do appreciate the thoroughness with which you present
25 your materials for me, and want to encourage that with you.

1 I also appreciate sincerely the cooperation that is
2 going into this case between the plaintiffs and the
3 defendants and find that in many, many instances simply
4 putting the issue down on a piece of paper, having the
5 response and a reply and an opportunity to confer resolves
6 all of the -- not all the issues but a significant number of
7 the issues.

8 I have published and have filed with the Court a
9 protocol for dealing with the Master with an amendment, and I
10 will continue to submit amendments as I think they are
11 necessary with the approval of the Court, which you will all
12 receive, on how we will interact, but I would like to just
13 sort of recap what has happened so far. It hasn't been a
14 significant amount, but on some of the motions to extend
15 deadlines and so forth, the motion is filed, the response is
16 filed, a reply is filed, and I then insist we will schedule a
17 hearing -- a telephone hearing, and I insist the parties
18 confer on the open issues before our telephone conference.

19 Often, at least three times out of I think seven
20 motions, the conference resulted in the matter being resolved
21 and it was completely withdrawn, which is wonderful. In
22 other instances the matters were narrowed so that a
23 conference call that I conducted on Monday I think there were
24 probably 14 issues and out of the 14 through -- I asked -- I
25 asked the defendant to file a supplemental response after a

1 mediation session on the telephone, the supplemental response
2 was filed, a supplemental reply was filed, and another
3 conference, meet and confer was conducted, so that on Monday
4 when I conducted that hearing out of 14 issues 12 of them had
5 been agreed to by the parties so there were only two
6 remaining. And in that instance -- actually in each instance
7 where I have had to go through conference and had to address
8 these issues, I have asked one side or the other to prepare
9 an order for consideration, run it by the opposing side and
10 then submit it to me for signature.

11 What we do is in those 12 issues that have been
12 resolved the order says by stipulation of the party the issue
13 involving X has been agreed or resolved. And so for the
14 first 12 it has been resolved, as to 13 the parties were
15 unable to reach resolution as to this issue and the Master
16 has ruled as follows, and the same thing as to 14. So that
17 indicates the first 12 have been stipulated to, obviously
18 there will be no appeal, the second two I had to resolve
19 myself, which either side has the right to appeal, and in the
20 order -- in every order that I have to sign there is going to
21 be a provision that you all know because as part of the
22 protocol that this order is subject to appeal before
23 Judge Battani pursuant to the order appointing me Special
24 Master.

25 So things have been working very smoothly. Again,

1 it is through a lot of cooperation, it is through a lot of
2 hard work. I try and conduct the mediation session first to
3 see if I can narrow the issues, do some follow-up work, have
4 some more supplemental filings and then if the parties can
5 resolve those issues we make a record of it, if I have to
6 rule I rule, and then you take it up with the Judge if you
7 have an issue with my ruling.

8 Now, many of the counsel sort of stumble and we
9 really didn't think this through about how do I bill. And in
10 the very first telephone conference I think we had 40 counsel
11 on the line, and question is how do I bill? Well, there were
12 40 lawyers and the bill was a total of \$1,200, and I just
13 can't send \$30 invoices to 40 lawyers. So I suggest at that
14 time, and counsel was cooperative, that they each designate
15 one party to receive my invoice and pay it and then allocate
16 it among themselves.

17 I'm going to ask, without my participation
18 obviously, that the plaintiffs try and establish either a
19 fund from which -- a centralized fund from which my invoices
20 can be paid and you will be able to allocate between the
21 respective cases my share of those fees -- or your -- the
22 parties' share of those fees, and the same thing with the
23 defendants, or if you cannot do that I would ask that during
24 the conference call it is part of my point sheet, the last
25 question is who do I invoice, I have to invoice somebody, and

1 if you will just give me a designated party to invoice I will
2 leave it up to you to allocate my invoice among the parties
3 that were involved in that particular motion. I really have
4 no preference one way or other, I just prefer not to issue 40
5 invoices for \$30 each.

6 So my assistant right here, Dawn Ciolino, is the
7 one that you have been dealing with in scheduling. She is
8 very, very competent. She has complete control of my
9 schedule. She will get -- she knows how we process this. If
10 you have a motion you just e-mail it to me, copy her in on
11 it, and we will set some -- she will set some deadlines for
12 you. Do not hesitate to e-mail her for clarification or
13 whatever. I would like to keep her between us so we do not
14 have any sort of one-on-one discussions. I'm not going to
15 have any substantive discussions with anybody on the
16 telephone or otherwise regarding any substantive matter, but
17 you can speak with Dawn about scheduling and you can speak
18 with her about filing supplemental briefs and scheduling
19 motion hearings and so forth.

20 I'm looking forward to working with all of you.
21 Today was very educational for me. I -- when I was
22 interviewed for this position, some of the local counsel know
23 I have been involved in litigation for 40 years and a great
24 deal of my time was spent in the automotive industry. I had
25 personally been present at a half dozen PPAPs, preproduction

1 approval processing where you test and see if a part is run
2 according to specs and within time and so forth. So I know a
3 great deal about the automotive industry and I am looking
4 forward to working with all of you in this case, and I really
5 enjoy the challenge that I think it is going to present.
6 It's good to meet all of you.

7 THE COURT: Okay. Any questions for the Master?
8 Any situations you want to bring up to the Court?

9 (No response.)

10 THE COURT: I would indicate that I appreciate you
11 who suggested, both sides, the two names. I don't know who
12 is plaintiff and who is defendant, that wasn't on the list,
13 but I had the two. And I wanted to say that I thought that
14 Mr. Esshaki, who turns out you -- he actually mediated
15 another case for me but other than that we have no
16 association and I didn't even know that, but because of his
17 work in the auto industry and because it was your suggestion
18 I thought that he would be a good Master.

19 Sometimes people ask me how do you select a master
20 for your case, and I just think we are all on the same page
21 as you submitted names and then I interviewed and that was
22 the end it.

23 All right. I think regarding the fees, again, that
24 it is just practical that either there will be a fund if you
25 want to have a fund or that one person says I'm in charge of

1 distributing or allocating the fee amongst plaintiffs or
2 defendants. Okay.

3 All right. The other thing -- maybe we will get to
4 it as we go through this. Never mind.

5 The next item is the motion to implement a
6 deposition protocol, and I think we already discussed that.
7 Then we have coordinated discovery and, again, that's
8 something that the Master will take care of when it is time
9 to do that.

10 The E is something that I want to address, and it
11 is end-payors objection to Master's order regarding motion to
12 compel interrogatory. I don't want to hear your argument, I
13 want a motion. I don't have a motion -- a written motion
14 here.

15 MR. WILLIAMS: Understood because we don't have an
16 order, which I presumed we would have. At the time we put
17 this on the agenda we thought we would have an order so we
18 were simply anticipating that by today it would be there and
19 we would have that in but --

20 THE COURT: Okay.

21 MR. WILLIAMS: -- we have not come to that point.

22 SPECIAL MASTER ESSHAKI: Again, I'm just returning
23 from an extended trip. In our -- we held a conference, and
24 did I assign somebody the responsibility to draft an order,
25 submit to opposing counsel, obtain approval and then send it

1 my way?

2 MR. WILLIAMS: Correct.

3 SPECIAL MASTER ESSHAKI: Okay. So I think it
4 wasn't resolved as of yet?

5 MR. WILLIAMS: On this motion -- this was the first
6 motion that we presented to you, Mr. Esshaki. It was
7 submitted by Peter Simmons probably about two weeks ago so --

8 SPECIAL MASTER ESSHAKI: It was a draft order
9 presented to me.

10 MR. WILLIAMS: Yes.

11 SPECIAL MASTER ESSHAKI: Counsel, I apologize. I
12 don't know where it fell through. If you wouldn't mind,
13 could you resend it?

14 MR. WILLIAMS: I will send it to you again.

15 SPECIAL MASTER ESSHAKI: Thank you. I apologize.

16 THE COURT: Okay. So we have that and we don't
17 have any objections in writing yet but we will get those I
18 take it. Okay.

19 The next item -- well, while I'm talking about
20 that, as Mr. Esshaki said, that according to the order
21 appointing the Master, we are not communicating on these
22 things, we are independent, and I will sit to review your
23 objections independently. I just want you to know that.
24 That's the way we operate, so I just don't think it is right
25 for me to tell Mr. Esshaki or me give him advice or he give

1 me advice, et cetera, without you knowing if there is some
2 subject that comes up that we would discuss together.

3 Okay. There may be something, as I listen today on
4 this scheduling, that he may want to ask me as to how I do
5 something or, you know, what I think about the number of days
6 or something. We may confer on the scheduling because I
7 think that's so critical but he is the one that is going to
8 finalize that.

9 Okay. The website?

10 MR. FINK: Your Honor, David Fink appearing on
11 behalf of direct-purchaser plaintiffs.

12 I do have to do one thing first, which is to say
13 that my wife, whose birthday is today, was grateful for the
14 invitation to come to court, but unfortunately she had to be
15 at an art class this morning. Okay. She made me say that.
16 Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. FINK: Your Honor --

19 THE COURT: She missed a great meeting.

20 MR. FINK: I'm going to tell her that. She'll be
21 here next time.

22 Your Honor, at the preliminary approval hearing on
23 July 1st the Court raised the issue of the possibility of
24 some kind of website presence related to a -- web presence
25 related to the pending actions.

1 I have had some discussions subsequently and in
2 particular Howard Iwrey and I have -- I don't mean to point,
3 but Howard Iwrey and I had some initial discussions, and what
4 we would like to do is working with other counsel put
5 together an informal proposal to the Court and maybe meet the
6 way we did when we addressed the ECF issues at the beginning
7 to make sure that we can do something that meets both the
8 Court's interest and provides some additional public
9 information that would be helpful for plaintiffs and
10 defendants.

11 THE COURT: There is one thing that I wanted to
12 mention. You know the Court has a new Internet -- what do we
13 call it, Internet, not the intranet, so we have a new
14 Internet site, and on that site there is quick links, and it
15 is called cases of interest. I'm thinking that maybe we can
16 just use that at this point so if you would just look at that
17 and see if there is something --

18 MR. FINK: Yes, Your Honor. In fact, Howard and I
19 both looked at exactly that spot on the site where there is
20 right now only two matters listed -- two matters listed.

21 THE COURT: We just implemented this site a week or
22 two ago.

23 MR. FINK: That seems to make a lot of sense to us
24 but we wanted to agree and make sure that both defendants and
25 plaintiffs are comfortable with the type of information that

1 would then be available on that, but that seems like a very
2 good idea.

3 THE COURT: There is another part on that site on
4 online services, it is selected new judicial opinions. I
5 never put my opinions on, I don't know why, I just have never
6 done that. If you want me to have some separate spot and
7 publish all of the opinions I can do that but, you know, let
8 me know if you think that's something that you would like.

9 MR. FINK: We will.

10 THE COURT: Okay. I just haven't used it. Okay.
11 Very good.

12 MR. FINK: Thank you.

13 THE COURT: Thank you. And then the next thing is
14 the date for the next conference. I have looked at a date,
15 we know January 28th, everybody agrees with that, that's been
16 set. How about May 6th? I think that is after perhaps the
17 religious holidays in April and it is before the Memorial Day
18 holiday, and we have a 6th Circuit conference next year,
19 believe it or not, I think the middle of May, so is there
20 anybody that has anything that you know of that might
21 conflict?

22 (No response.)

23 THE COURT: Let's set that then for May 6th at
24 10:00.

25 Before we go to our settlement hearings, let me ask

1 if anybody has any other matters that needs to come before
2 the Court?

3 MR. KANNER: Before we start that part, the next
4 segment of the hearings, I would just remind the Court, I'm
5 sure it is on your docket, that in addition to the
6 December 3rd hearings that we spoke of earlier we have a
7 November 5th hearing for final approval on the Nippon Seiki
8 settlement.

9 THE COURT: Yes, those two additional dates are
10 there, they don't involve everybody, just the people on the
11 cases. Yes. Anything else?

12 (No response.)

13 THE COURT: All right. Why don't -- you want to
14 take a five-minute break, just a bathroom break. No? You
15 are ready to proceed. Well, let's take five minutes.

16 THE LAW CLERK: All rise. Court is in recess.

17 (Court recessed at 12:22 p.m.)

18 — — —

19 (Court reconvened at 12:33 p.m.; Court, Counsel and
20 all parties present.)

21 THE LAW CLERK: All rise. Court is in session.

22 THE COURT: Ready to go.

23 MR. BURNS: We are not rushing the bench.

24 THE COURT: I just have to pull these up here.

25 Okay. This is in the wire harness.

1 MR. BURNS: With your permission, Your Honor, and
2 we will proceed however you want, but the end payors and the
3 automobile dealers think it might be more efficient to bring
4 all of the Yazaki settlements together at once, our arguments
5 will be the same for each.

6 THE COURT: I think that's an excellent idea and I
7 was planning on doing that. Go ahead.

8 MR. BURNS: Thank you, Your Honor.

9 I'm joined obviously by Don Barrett for the
10 automobile-dealership plaintiffs, and John Majoras
11 representing Yazaki is behind me.

12 Your Honor, we truly think that the settlement with
13 Yazaki is certainly significant and a very, very important
14 step in this litigation. Combined the settlement was
15 \$100 million for both the end-payor plaintiffs and the
16 automobile-dealership plaintiffs covering three parts for
17 which we have alleged claims against Yazaki.

18 The end payors will receive \$76 million out of the
19 combined settlement, and we have divided that among the three
20 part classes with wire harness receiving a little over
21 73 million, IPC receiving 2.6 million and fuel senders
22 58,000. Those figures are based on the volumes of commerce
23 that roughly approximate to those particular parts based on
24 information we received from Yazaki.

25 The dealers will receive 24 million, and they have

1 divided that in similar fashion amongst their parts.

2 Your Honor, we do think that the settlement amounts
3 are fair, reasonable and certainly adequate under the
4 circumstances of this case. Yazaki is a major defendant,
5 paid a major fine in this case, but they also have very
6 significant information about wire harness and fuel senders
7 and IPCs and perhaps other cases that we'll be able to work
8 with them through the cooperation elements in the settlement
9 agreement, and we do think that cooperation is very valuable,
10 we factored it into the settlement, and we wish to proceed
11 accordingly on that front, and we think it will hopefully
12 streamline the wire harness case and the ICP case and the
13 fuel senders case and allow us to move that forward in an
14 expeditious manner.

15 We reached these settlements for which we seek
16 preliminary approval after about frankly a year and-a-half of
17 arm's-length negotiations. During that period Yazaki
18 provided significant information about their role in the
19 conspiracy and about their parts and volumes of commerce
20 involved. Plaintiffs conducted an independent examination,
21 we worked with our economist. We met repeatedly over the
22 phone and in person with Yazaki to reach the settlement.
23 Finally after about a year and-a-half we came down to the
24 agreement that is before the Court today. This is the first
25 nine-figure settlement in the case involving a major

1 defendant, and as I said, we will take advantage fully of the
2 cooperation elements of the agreement.

3 We believe the plaintiffs have satisfied for
4 purposes of this preliminary approval hearing the
5 requirements of Rules 23(A) and 23(B)(3) and that the Court
6 should provisionally approve the settlement class. We also
7 ask the Court to stay further proceedings against Yazaki in
8 accordance with the terms of the settlement agreement. We
9 ask that the Court authorize plaintiffs in this case -- or in
10 these cases rather to provide notice at a later date as we
11 have done in previous settlements, Your Honor. Essentially
12 we are now in ongoing negotiations with other defendants at
13 this point, and due to the enormous cost frankly of notice in
14 case we are trying to reach critical mass, if you will, so we
15 can efficiently do it in a way that maximizes the value and
16 benefit for the class.

17 Finally, Your Honor, we ask that the Court appoint
18 interim co-lead counsel for end payors and dealerships as
19 settlement class counsel in their respective cases for
20 purpose of the settlement.

21 I will turn the microphone over to my friend,
22 Don Barrett.

23 THE COURT: Mr. Barrett.

24 MR. BARRETT: We concur in everything that the end
25 payors have just said. Your Honor, the only thing I would

1 add that Yazaki's -- it is -- this is an excellent settlement
2 on the numbers. It is like ten percent of affected sales for
3 our clients, and that's an astonishing result, and their
4 sales will remain in the case for purposes of computing
5 treble damages and also against the remaining defendants and
6 should be part of any joint and several liability claims
7 against the remaining defendants, so this is a great
8 accomplishment for both the end payors and the auto dealers.

9 THE COURT: Okay. The Court has reviewed these
10 motions but let's get defendant's response.

11 MR. MAJORAS: Your Honor, John Majoras for Yazaki.
12 We have nothing to add.

13 THE COURT: Okay. I didn't want to leave you out.

14 MR. MAJORAS: Thank you, Your Honor.

15 THE COURT: Under the governing standards as set
16 forth in Rule 23(E)(2), the settlement must be fair,
17 reasonable and adequate. The Court's task, of course, in
18 assessing the settlement is to determine whether the proposed
19 settlement falls within that range of possible approval. The
20 Court based on the information presented finds that the
21 proposed settlement deserves preliminary approval. In the
22 opinion of this Court, the factors favoring settlement
23 reflect that the results appears fair, reasonable and
24 adequate, particularly in light of the expense, duration and
25 uncertainty of this continued litigation.

1 The claims are complex, the issues are numerous,
2 the defendants are foreign parties which makes discovery
3 quite a bit more complicated, and the complexity of the
4 issues in this case and the potential damages make appeal
5 more likely.

6 And I think very importantly particularly here with
7 Yazaki that in the absence of the settlement the plaintiffs
8 would not have the benefit of the cooperation of Yazaki. So
9 I find that that's a very important part of the settlement
10 given the nature of antitrust conspiracies, and also the
11 compensation in this matter is certainly significant given
12 particularly the amount versus the cost of any further
13 proceedings in this matter.

14 The Court believes negotiations were conducted at
15 arm's-length over the period of one and-a-half years.
16 Counsel is experienced in antitrust and these class-action
17 matters. I give great weight, I've said it before and I will
18 say it again, I give great weight to the experience of
19 counsel in coming to the table to resolve these issues, and I
20 feel very confident in their ability to handle and resolve
21 these matters.

22 The next issue is whether the proposed settlement
23 should be provisionally certified under Rule 23. Let me just
24 briefly touch upon those factors. First, numerosity here,
25 the number of plaintiffs within the proposed class make

1 joinder impractical, the existence of question of law, the
2 second factor, common to the class, and certainly in
3 anti-price-fixing conspiracy cases by their nature deal with
4 common legal and factual questions about the existence, scope
5 and effect of the conspiracy.

6 Third factor, typicality, the proposed class
7 representative can satisfy this requirement where the claims
8 arise from the same event or course of conduct that gives
9 rise to the claims of other class members. I'm satisfied
10 here that the individual plaintiffs' injury arise from the
11 same wrong as alleged against the class as a whole.

12 Fourth, adequacy of representation. The Court must
13 be assured, and certainly in this case I feel assured, that
14 the representative parties will fairly and adequately protect
15 the interest of the class, that is that the named plaintiffs
16 would represent the class and there is not a conflict amongst
17 them. The Court finds that the class representatives will
18 adequately protect the interest of the class because they
19 share the same interest of other members.

20 Finally, under Rule 23(B)(3) the Court is satisfied
21 that the plaintiff demonstrate that common questions
22 predominate over questions affecting only individual members,
23 and that class resolution is superior to other methods for a
24 fair and efficient adjudication. Specifically the claim
25 involved here is a single conspiracy from which all proposed

1 class members' injuries arise. Evidence shows a violation as
2 to one settlement class member is common to the class and
3 will provide violation to all.

4 So I find these are the common issues and that a
5 class action is superior and pending final approval of the
6 proposed settlement, after the fairness hearing the Court
7 finds that the prerequisites under 23(B)(3) have been met.

8 The Court agrees with both sides that the
9 proceedings here should be stayed until notice is provided at
10 a later date, and we delayed notice in the other settlements
11 and I think here that's clearly advisable because of the cost
12 involved, so for that and for efficiency purpose the Court
13 will delay the notice. The Court appoints the interim
14 co-lead class counsel as settlement counsel for this case.

15 Are you satisfied I have covered all of the
16 elements?

17 MR. BURNS: I believe so, Your Honor.

18 MR. BARRETT: Yes.

19 THE COURT: The Court approves the preliminary
20 settlement and will sign those proposed orders.

21 MR. BURNS: Thank you very much.

22 THE COURT: Okay. Thank you. The next is the
23 preliminary approval of the settlement with the auto dealers
24 and the end payors in the TRW litigation.

25 MS. TRAN: Good afternoon, Your Honor. May it

1 please the Court, my name is Elizabeth Tran of Cotchett,
2 Pitre & McCarthy for the end payors. I'm here with Jon
3 Cuneo.

4 MR. CUNEO: From Cuneo, Gilbert & LaDuca on behalf
5 of the dealers.

6 MS. TRAN: I will keep this brief because I know
7 this is the last item on a long agenda. We are seeking
8 preliminary approval of our settlement with the TRW
9 defendants. End payors and auto dealers have alleged claims
10 against TRW in only one case so far, occupant safety systems
11 or OSS. The approximately \$5.44 million settlement for the
12 end payors is fair, reasonable and adequate for quite a few
13 reasons. I will just speak for the end payors and Jon can
14 speak about the auto dealers.

15 First, the settlement arises from extensive
16 arm's-length and good-faith negotiations between experienced
17 counsel over a one plus year period.

18 Second, the settlement offers significant
19 compensation to the proposed class that will be available
20 much earlier -- years earlier than would be the case if
21 litigation against TRW continued through trial and appeal.

22 Third, the settlement comes at an early time in the
23 auto parts litigation. It is the fifth settlement in this
24 MDL and the second settlement in the OSS case. This
25 settlement encourages future settlements and strengthens

1 plaintiffs' hand in the litigation.

2 Fourth, the settlement requires TRW to provide
3 cooperation such as attorney proffers, witness interviews and
4 depositions, relevant documents and transactional data.
5 TRW's cooperation is valuable because it allows end payors to
6 obtain such information without extended and expensive
7 discovery, and it also enhances our prosecution of claims
8 against non-settling defendants.

9 Fifth, the settlement exceeds TRW's criminal fine
10 for participating in a conspiracy of a narrower temporal
11 scope than end payors allege in their complaint.

12 And finally the settlement only releases TRW from
13 end-payors' claim concerning OSS.

14 For all of these reasons we ask that the Court
15 preliminarily approve our TRW settlement. You already
16 discussed why the Court would provisionally approve the
17 proposed Yazaki settlement class under Rule 23 (A) and (B),
18 and the reasons here are the same and I will skip them.

19 End payors also request that the Court stay the
20 proceedings against TRW in accordance with the settlement.
21 We ask that the Court authorize end payors to provide notice
22 of the settlement agreement to the class members at a later
23 date, and we also ask that the Court appoint interim co-lead
24 class counsel for end payors as the settlement class counsel
25 for the settlement.

1 THE COURT: Thank you, Counsel. Mr. Cuneo.

2 MR. CUNEO: Thank you, Your Honor. And I -- in
3 terms of the reasons I would want to identify for the dealers
4 with the reasons that Ms. Tran just advanced on behalf of the
5 end payors. I just want to add one set of facts for Your
6 Honor's consideration. The negotiations were extended, I
7 would say difficult at times, and culminated in a meeting at
8 one point in which I believe that all three lead counsel for
9 both the dealers and the end payors attended with counsel for
10 TRW at which the framework of the settlement was agreed upon.

11 So the negotiations were lengthy, Your Honor, they
12 were at times difficult, but here we are, we have an
13 agreement, Ms. Tran has explained why the agreement works
14 well for her clients, and for the same considerations it
15 works well for ours.

16 THE COURT: All right. Defendant?

17 MR. IWREY: Your Honor, Howard Iwrey for the TRW
18 defendants.

19 TRW has nothing to add. Thank you.

20 THE COURT: Okay. I'm not going to repeat
21 everything that I said Yazaki because TRW is very similar in
22 terms of satisfying the provisions of Rule 23 (E)(2) and (A).
23 Actually the Court in going through this has reviewed the
24 matter and I think that the settlement amount is certainly a
25 good settlement amount to resolve this and in comparison to

1 the criminal fines given the complexity of this matter and
2 the cost that it would be going forward, and I think one of
3 the most important factors that I have seen in all of these
4 settlements is the cooperation of the defendants with
5 continuing in this case.

6 The Court certainly finds that there is numerosity
7 and common questions of fact and law, typicality, adequacy of
8 representation, and I would say as I said before I depend on
9 counsel and I have all faith in counsel that you have the
10 ability and experience to determine a good resolution for
11 your clients.

12 And I appreciate what has been said regarding the
13 lengthy negotiations and the difficulty of the negotiations
14 in resolving these matters, but I'm convinced that it is that
15 work that leads to this final conclusion.

16 The Court, of course, believes that the class
17 members can adequately represent the class for all the
18 reasons I have stated in Yazaki's settlement. I believe that
19 counsel can adequately represent the class because of what I
20 have just said about counsel. The Court agrees with both
21 sides that the proceedings should be stayed against TRW and
22 that notice should be provided at a later date. Again, the
23 cost of providing notice and with settlements coming in it
24 appears economical and efficient to delay the notice.

25 Lastly, the Court appoints interim counsel as

1 settlement class counsel for this settlement. The Court
2 approves the preliminary settlement and will sign the
3 proposed order.

4 Is there anything else that the Court has not
5 covered here that you wish covered?

6 MR. TRAN: No. Thank you, Your Honor.

7 THE COURT: Mr. Cuneo?

8 MR. CUNEO: No. Thank you, Your Honor.

9 THE COURT: Thank you very much. Okay. All right.
10 I believe that concludes the agenda, right?

11 MR. CUNEO: Your Honor, before you adjourn, there
12 is one housekeeping matter that Mr. Iwrey and I have and that
13 is that we need to substitute a page that we are going to
14 make a file on that, it has the wrong number.

15 THE COURT: In the settlement?

16 MR. IWREY: In the settlement agreement.

17 MR. CUNEO: It just has the wrong number.

18 THE COURT: Okay.

19 MR. CUNEO: Thank you.

20 THE COURT: Thank you. Thank you all very much. I
21 will see you in January. Happy holidays.

22 (Proceedings concluded at 12:52 p.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of Automobile Parts Antitrust Litigation, Case No. 12-02311, on Wednesday, October 8, 2014.

s/Robert L. Smith
Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 10/22/2014

Detroit, Michigan